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Contents

Federal Register

Vol. 74, No. 162

Monday, August 24, 2009

Agriculture Department
See Animal and Plant Health Inspection Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42688–42689

Animal and Plant Health Inspection Service
NOTICES
Availability of Biotechnology Quality Management System Pilot Project Draft Audit Standard, 42644

Army Department
NOTICES
Army Services Contract Inventory:
Fiscal Year 2008; Availability, 42653

Bonneville Power Administration
NOTICES
Availability of Record of Decision (ROD):
Electrical Interconnection of the Golden Hills Wind Project, 42667

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42647–42648

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42675–42676

Coast Guard
PROPOSED RULES
Safety Zones:
BW PIONEER at Walker Ridge 249, Outer Continental Shelf FPSO, Gulf of Mexico, 42612–42614
Private Fireworks Show, Chesapeake Bay, Virginia Beach, VA, 42614–42617
NOTICES
Certificate of Alternative Compliance:
Offshore Supply Vessel CHARLES M CALLAIS II, 42681–42682
Tug Boat LA FORCE, 42681

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42646–42647

Defense Department
See Army Department
See Navy Department
PROPOSED RULES
Federal Acquisition Regulation:
FAR Case 2009–05, Use of Project Labor Agreements for Federal Construction Projects, 42639

Drug Enforcement Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42690–42691
Dismissal of Proceeding:
Spirit Pharmaceuticals, L.L.C., 42692

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Application to Export Electric Energy:
Louis Dreyfus Energy Services LP, 42653–42654

Environmental Protection Agency
PROPOSED RULES
Regulation of Fuels and Fuel Additives:
Federal Volatility Control Program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 1997 8-Hour Ozone Nonattainment Area, 42619–42625
Toxics Release Inventory Articles Exemption Clarification, 42625–42631
NOTICES
No Discharge Zone Determinations:
North Carolina Waters Along the Entire Length of New Hanover County, 42672–42673

Executive Office of the President
See Presidential Documents
See Science and Technology Policy Office

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
General Electric Co. (GE) CF34–8E Series Turbofan Engines, 42610–42612
NOTICES
Meetings:
10th RTCA Special Committee 216/Aeronautical Systems Security (Joint Meeting with EUROCAE WG–72), 42734
3rd RTCA Special Committee 219/Attitude and Heading Reference System (AHRS), 42733–42734

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42691–42692

Federal Communications Commission
PROPOSED RULES
Broadband over Power Line Systems, 42631–42639

Federal Energy Regulatory Commission
NOTICES
Applications:
Claire Fay and Charles Hotchkin, 42659
Duke Energy Indiana, Inc., 42664–42665
Free Flow Power Ohio River 1, LLC, 42656
Free Flow Power Ohio River 10, LLC, 42663
Free Flow Power Ohio River 11, LLC, 42662–42663
Free Flow Power Ohio River 12, LLC, 42662
Free Flow Power Ohio River 13, LLC, 42661–42662
Free Flow Power Ohio River 14, LLC, 42661
Free Flow Power Ohio River 15, LLC, 42660–42661
Free Flow Power Ohio River 16, LLC, 42660
Free Flow Power Ohio River 17, LLC, 42659–42660
Free Flow Power Ohio River 2, LLC, 42656
Free Flow Power Ohio River 3, LLC, 42657
Free Flow Power Ohio River 4, LLC, 42666–42667
Free Flow Power Ohio River 5, LLC, 42657
Free Flow Power Ohio River 6, LLC, 42666
Free Flow Power Ohio River 7, LLC, 42658
Free Flow Power Ohio River 8, LLC, 42665–42666
Free Flow Power Ohio River 9, LLC, 42658
KW Sackheim Development, 42654
S.D. Warren Co., 42664
Tieton Hydropower, LLC, et al., 42663
Town of Afton, 42654–42655
Environmental Impact Statements; Availability, etc.:
Grand River Dam Authority, 42670
Meetings:
California Independent System Operator Corp.; Technical Conference, 42670–42671
Small Hydropower Development in the United States; Technical Conference:, 42671
Records Governing Off–the Record Communications, 42671–42672

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42732–42733

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42674–42677
Determination of Regulatory Review Period for Patent Extension:
LEXISCAN, 42678

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation:
FAR Case 2009–05, Use of Project Labor Agreements for Federal Construction Projects, 42639

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Required Scale Tests, 42608–42610

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
RULES
Breach Notification for Unsecured Protected Health Information, 42740–42770
NOTICES
Request for Information Relevant to the Regionalization of Emergency Medical Care Delivery Systems and Demonstration Model Development, 42673–42674

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42676

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services
RULES
Privacy Act; Implementation of Exemptions, 42575–42580
NOTICES
Meetings:
DHS Data Privacy and Integrity Advisory Committee, 42680

Indian Affairs Bureau
NOTICES
Proposed Finding Against Acknowledgment of the Brothertown Indian Nation, 42683–42685

Industry and Security Bureau
NOTICES
Meetings:
Regulations and Procedures Technical Advisory Committee, 42652
Transportation and Related Equipment Technical Advisory Committee, 42652
Recruitment of Private-Sector Members:
Technical Advisory Committees, 42652–42653

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42648–42649
Antidumping:
Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 42649–42650

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Federal Bureau of Investigation
See Justice Programs Office
NOTICES
Lodging of Proposed Consent Decree Under the Federal Water Pollution Control Act, 42687

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42687–42690

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42692–42694

Land Management Bureau
NOTICES
Proposed Reinstatements of Terminated Oil and Gas Leases:
Wyoming, 42685–42686
Realty Actions:
Application for Conveyance of Federal Mineral Interests, Cochise County, AZ, 42686–42687

Maritime Administration
NOTICES
Requested Administrative Waiver of the Coastwise Trade Laws:
Game Boat, 42736
My Way, 42737

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation:
FAR Case 2009–05, Use of Project Labor Agreements for Federal Construction Projects, 42639
NOTICES
Intent to Grant a Partially Exclusive License, 42694

National Archives and Records Administration
NOTICES
Charter Renewals:
Advisory Committee on Electronic Records Archives, 42694

National Highway Traffic Safety Administration
PROPOSED RULES
Federal Motor Vehicle Safety Standard No. 108:
Lamps, Reflective Devices and Associated Equipment, 42639–42641
NOTICES
Petition for Import Eligibility of Noncomforming Vehicles:
2003–2006 Mercedes Benz C-Class (W203 Chassis) Passenger Cars, 42734–42736

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 42678–42679
National Human Genome Research Institute, 42679–42680

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Atlantic Deep-Sea Red Crab Fishery; Emergency Rule; Extension, 42606–42607
Listing Endangered and Threatened Species:
Change in Status for Upper Columbia River Steelhead Distinct Population Segment, 42605–42606
Magnuson-Stevens Fishery Conservation and Management Act Provisions:
Fisheries of the Northeastern United States; Tilefish (Amendment 1), 42580–42604
PROPOSED RULES
Fisheries in the Western Pacific:
Bottomfish and Seamount Groundfish Fisheries; 2009–10 Main Hawaiian Islands Bottomfish Total Allowable Catch, 42641–42643
NOTICES
Federal Consistency Appeals:
Villa Marina Yacht Harbour, Inc., 42650–42651
Final Management Plan and Environmental Assessment for Thunder Bay National Marine Sanctuary; Availability, 42651

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 42682
National Register of Historic Places:
Pending Nominations and Related Actions, 42682–42683
Weekly Listing of Historic Properties, 42683

National Science Foundation
NOTICES
Permits Issued Under the Antarctic Conservation (1978), 42694

National Telecommunications and Information Administration

NOTICES
Broadband Initiatives Program; Broadband Technology Opportunities Program, 42644–42646

Navy Department
RULES
Certifications and Exemptions Under International Regulations for Preventing Collisions at Sea (1972), 42604–42605

Nuclear Regulatory Commission
NOTICES
Licenses:
United States Enrichment Corporation, 42694–42697
Order Imposing Civil Monetary Penalty:
National Health Physics Program, Department of Veterans Affairs, 42697–42699
Proposed Generic Communication:
NRC Regulatory Issue Summary 2005–02, Revision 1, Clarifying the Process for Making Emergency Plan Changes, 42699–42703

Presidential Documents
ADMINISTRATIVE ORDERS
Columbia; Continuation of Drug Interdiction Assistance (Presidential Determination)
No. 2009–24 of August 13, 2009, 42573

Rural Utilities Service
NOTICES
Broadband Initiatives Program; Broadband Technology Opportunities Program, 42644–42646

Science and Technology Policy Office
NOTICES
Meetings:
Aeronautics Science and Technology Subcommittee, 42706

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42707–42708
Joint Industry Plan:
Summary Effectiveness on a Temporary Basis of Joint Amendment No. 1 to the Options Order Protection, etc., 42709–42710
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 42719–42721
Fixed Income Clearing Corp., 42716–42717
NASDAQ OMX BX, Inc., 42724–42725

New York Stock Exchange LLC, 42717–42719
NYSE Amex LLC, 42714–42716
NYSE Arca Inc., 42710–42711 42725–42727
Stock Clearing Corp. of Philadelphia, 42721–42723
The Boston Stock Exchange Clearing Corp., 42711–42714

Small Business Administration
NOTICES
Action Subject to Intergovernmental Review (Under Executive Order 12372), 42704–42705
Disaster Declarations:
Iowa, 42705
Kentucky, 42706
Maine, 42705–42706
Pennsylvania, 42705

Social Security Administration
NOTICES
Privacy Act; Systems of Records, 42727–42732

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
NOTICES
Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits, etc., 42732

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42737

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 42680–42681

Veterans Affairs Department
PROPOSED RULES
Stressor Determinations for Posttraumatic Stress Disorder, 42617–42619

Western Area Power Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Big Stone II Power Plant and Transmission Project, 42667–42670

Separate Parts In This Issue

Part II
Health and Human Services Department, 42740–42770

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Presidential Determinations:

No. 2009-24 of August 13, 2009 42573

6 CFR

5 (5 documents) 42575, 42576, 42577, 42578, 42579

9 CFR

Proposed Rules:

201 42608

14 CFR

Proposed Rules:

39 42610

15 CFR

902 42580

32 CFR

706 42604

33 CFR

Proposed Rules:

147 42612

165 42614

38 CFR

Proposed Rules:

3 42617

40 CFR

Proposed Rules:

80 42619

372 42625

45 CFR

160 42740

164 42740

47 CFR

Proposed Rules:

15 42631

48 CFR

Proposed Rules:

2 42639

17 42639

22 42639

36 42639

52 42639

49 CFR

Proposed Rules:

571 42639

50 CFR

223 42605

648 (2 documents) 42580, 42606

Proposed Rules:

665 42641

Federal Register
Vol. 74, No. 162
Monday, August 24, 2009

Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–24 of August 13, 2009

Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.

[FR Doc. E9–20431
Filed 8–21–09; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

Vol. 74, No. 162

Monday, August 24, 2009

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

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0067]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL—020 Internal Affairs Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department-wide system of records entitled the ''Department of Homeland Security/ALL—020 Internal Affairs Records System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security/ALL—020 Internal Affairs Records system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 24, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 67422, November 14, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/ALL—020 Internal Affairs Records system. The DHS/ALL—020 Internal Affairs Records system of records notice was published concurrently in the **Federal Register**, 73 FR 67529, November 18, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''18'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

18. The DHS/ALL—020 Internal Affairs Records system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL—020 Internal Affairs Records system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: The enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL—020 Internal Affairs Records system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because

requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training, and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 12, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20159 Filed 8–21–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0065]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL—018 Grievances, Appeals and Disciplinary Action Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department-wide system of records entitled the ''Department of Homeland Security/ALL—018 Grievances, Appeals and Disciplinary Action Records System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security/ALL—018 Grievances, Appeals and Disciplinary Action Records system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 24, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 62214, October 20, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/ALL—018 Grievances, Appeals and Disciplinary Action Records system. The DHS/ALL—018 Grievances, Appeals and Disciplinary Action Records system of records notice was published concurrently in the **Federal Register**, 73 FR 61882, October 17, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph 16:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

16. The DHS/ALL—018 Grievances, Appeals and Disciplinary Action Records system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL—018 Grievances, Appeals and Disciplinary Action Records system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL—018 Grievances, Appeals and Disciplinary Action Records system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system

from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: Refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 12, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20264 Filed 8–21–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0062]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL—006 Accident Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department-wide system of records entitled the ''Department of Homeland Security/ALL—006 Accident Records System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security/ALL—006 Accident Records system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 24, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 71563, November 25, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/ALL—006 Accident Records system. The DHS/ALL—006 Accident Records system of records notice was published concurrently in the **Federal Register**, 73 FR 71661, November 25, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Public Law 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''17'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

17. The DHS/ALL—006 Accident Records system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL—006 Accident Records system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL—006 Accident Records system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons: From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of information related to the protection of a President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

Dated: August 12, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20151 Filed 8–21–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0064]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL—024 Facility and Perimeter Access Control and Visitor Management System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department-wide system of records entitled the ''Department of Homeland Security/ALL—024 Facility and Perimeter Access Control and Visitor Management System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security/ALL—024 Facility and Perimeter Access Control and Visitor Management system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 24, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 74 FR 2906, January 16, 2009, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/ALL—024 Facility and Perimeter Access Control and Visitor Management system. The DHS/ALL—024 Facility and Perimeter Access Control and Visitor Management system of records notice was published concurrently in the **Federal Register**, 74 FR 3081, January 16, 2009, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or the system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, the following new paragraph ''19'':

* * * * *

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

19. The DHS/ALL—024 Facility and Perimeter Access Control and Visitor Management system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL—024 Facility and Perimeter Access Control and Visitor Management system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. The DHS/ALL—024 Facility and Perimeter Access Control and Visitor Management system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law

enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: August 12, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20155 Filed 8–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2009–0063]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL—013 Claims Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security is issuing a final rule to amend its regulations to exempt portions of a Department-wide system of records entitled the ''Department of Homeland Security/ALL—013 Claims Records System of Records'' from certain provisions of the Privacy Act. Specifically, the Department exempts portions of the Department of Homeland Security/ALL—013 Claims Records system from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: *Effective Date:* This final rule is effective August 24, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) published a notice of proposed rulemaking in the **Federal Register**, 73 FR 63908, October 28, 2008, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. The system of records is the DHS/ALL—013 Claims Records system. The DHS/ALL—013 Claims Records system of records notice was published concurrently in the **Federal Register**, 73 FR 63987, October 28, 2008, and comments were invited on both the notice of proposed rulemaking and system of records notice. No comments were received.

Public Comments

DHS received no comments on the notice of proposed rulemaking or system of records notice. DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

■ For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Public Law 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add at the end of Appendix C to Part 5, Exemption of Record Systems under the Privacy Act, the following new paragraph 15:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

15. The DHS/ALL—013 Claims Records system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL—013 Claims Records system is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security, intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL—013 Claims Records system contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, State, local, Tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f), and (g) pursuant to 5 U.S.C. 552a(j)(2). Additionally, the Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (I), and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve

national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of an investigation, thereby interfering with the related investigation and law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information would impede law enforcement in that it could compromise investigations by: revealing the existence of an otherwise confidential investigation and thereby provide an opportunity for the subject of an investigation to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential informants, which would negatively affect the informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating as confidential informants in any future investigations.

(f) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS' ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal, and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act relating to individuals' rights to access and amend their records contained in the system. Therefore DHS is not required to establish rules or procedures pursuant to which individuals may seek a civil remedy for the agency's: refusal to amend a record; refusal to comply with a request for access to records; failure to maintain accurate, relevant timely and complete records; or failure to otherwise comply with an individual's right to access or amend records.

Dated: August 12, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20154 Filed 8–21–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 071220873–91153–02]

RIN 0648–AS25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish; Amendment 1

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Amendment 1 to the Tilefish Fishery Management Plan (FMP), developed by the Mid-Atlantic Fishery Management Council (Council). The approved measures address issues and problems that have been identified since the FMP was first implemented. These measures are intended to achieve the management objectives of the FMP, and implement an Individual Fishing Quota (IFQ) program.

DATES: Effective November 1, 2009, except for the amendments to 15 CFR 902.1(b), and 50 CFR 648.290 and 648.291, which are effective August 24, 2009.

ADDRESSES: A Final Environmental Impact Statement (FEIS) was prepared for Amendment 1 that describes the action and other alternatives considered and provides a thorough analysis of the impacts of the approved measures and alternatives. Copies of supporting documents, including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/.*

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this proposed rule should be submitted to the Regional Administrator at 55 Great Republic Drive, Gloucester, MA 01930, and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Timothy A. Cardiasmenos, Fishery Policy Analyst, 978–281–9204.

SUPPLEMENTARY INFORMATION:

Background

In March 2004, the Mid-Atlantic Fishery Management Council (Council) began development of Amendment 1 to the FMP to evaluate alternatives for a limited access privilege program (LAPP) and other measures for limited access tilefish vessels. The Council held 17 public meetings on Amendment 1 between March 2004 and April 2008. After considering a wide range of issues, alternatives, and public input, the Council submitted a Draft Environmental Impact Statement (DEIS) for Amendment 1 to NMFS. The Notice

of Availability (NOA) for the DEIS published in the **Federal Register** on December 28, 2007 (72 FR 73798). Following the public comment period that ended February 11, 2008, the Council adopted Amendment 1 on April 10, 2008. The NOA for Amendment 1 was published on May 4, 2009 (74 FR 20448), with a comment period ending on July 6, 2009. A proposed rule for Amendment 1 was published on May 18, 2009 (74 FR 23147), with a comment period ending on July 2, 2009. On July 31, 2009, NMFS approved Amendment 1 on behalf of the Secretary of Commerce.

Amendment 1 was developed and adopted by the Council consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Amendment 1 management measures were developed by the Council to: (1) Implement an IFQ program; (2) establish IFQ transferability of ownership; (3) establish a cap on the acquisition of IFQ allocation (temporary and permanent); (4) address fees and cost-recovery; (5) establish flexibility to revise/adjust the IFQ program; (6) establish IFQ reporting requirements; (7) modify the Interactive Voice Response (IVR) reporting requirements; (8) require Charter/Party vessel permits, and recreational landing limits; (9) improve monitoring of tilefish commercial landings; (10) expand the list of management measures that can be adjusted via the framework adjustment process; (11) modify the Essential Fish Habitat (EFH) designation; (12) modify the habitat areas of particular concern (HAPC) designation; and (13) implement measures to reduce gear impacts on EFH within the Exclusive Economic Zone (EEZ). The IFQ program measures are intended to reduce overcapacity in the commercial fishery, and to eliminate, to the extent possible, problems associated with a derby-style fishery. Amendment 1 also created a tilefish Charter/Party permit, which will require reporting from owners or operators of vessels that take fishermen for hire. When the original FMP was implemented in 2001, the recreational component of the fishery was thought to be small. However, anecdotal evidence suggests that, in recent years, the recreational component of the fishery may have grown. The tilefish open access Charter/Party permit will provide NMFS with the ability to collect landings information on this component of the fishery in order to properly assess the health of the stock.

Approved Measures

Changes in the descriptions of the management measures from the proposed rule's descriptions are noted below. Changes in the regulatory text from the proposed rule are noted under ''Changes from Proposed Rule to Final Rule'' in the preamble of this final rule.

Institution of an IFQ Program in the Tilefish Fishery

Amendment 1 requires that a qualified vessel owner obtain a valid tilefish IFQ Allocation permit to possess or land tilefish in excess of an incidental catch limit of tilefish (*see* below). In addition, a vessel owner is required to possess, and carry on board, a valid tilefish vessel permit to fish for, possess, or land tilefish in or from the Tilefish Management Unit (TMU). An incidental catch of 300 lb (136 kg) of tilefish, per trip, can be landed by any vessel issued a tilefish vessel permit, other than a Charter/Party vessel permit, not fishing under a tilefish IFQ Allocation permit. All permits issued to current limited access vessels (*i.e.,* all Full-time and Part-time vessels) will be automatically converted to tilefish open access permits and issued to the permit holder of record prior to November 1, 2009. In addition, current holders of tilefish limited access permits will be issued a tilefish IFQ Allocation permit if they meet the Amendment 1 qualification criteria (*see* item B below). IFQ Allocation permit holders are required to declare all vessel(s) that they own, or lease, that will land their IFQ allocation, by providing a list to NMFS at the beginning of each fishing year (prior to receiving their IFQ Allocation permit). Although not explicitly stated in the proposed rule, NMFS clarifies in this final rule that IFQ Allocation permit holders must notify NMFS, in writing, if they wish to remove any of these declared vessels from the list of vessels that may possess tilefish under the authorization of their IFQ Allocation permit. In addition, an IFQ Allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit, must send written notification to NMFS that includes the vessel permit number, and the date on which the vessel is authorized to land IFQ tilefish pursuant to the IFQ Allocation permit.

A. Initial IFQ Allocation Permit Application

NMFS will notify all vessel owners, for whom NMFS has tilefish landings data available, whose vessel(s) meet(s) the qualification criteria described below. Applications for initial tilefish IFQ Allocation permits must be submitted to NMFS no later than February 22, 2010.

B. Qualifying Criteria

Amendment 1 specifies the landings and permit history criteria that must be met to qualify for a tilefish IFQ Allocation permit. NMFS has clarified these qualifying criteria such that persons or entities who purchased vessels with fishing histories that include a 2005 tilefish limited access permit meet these initial qualifying criteria. Under Amendment 1, a person or entity is eligible to be issued a tilefish IFQ Allocation permit if he/she owns a vessel with fishing history indicating that the vessel was issued a valid tilefish limited access permit for the 2005 permit year or, if the person or entity currently holds a valid Confirmation of Permit History (CPH) for the fishing history associated with a vessel that was issued a valid tilefish limited access permit for the 2005 permit year (*see* Item C below for further detail regarding CPH vessels). Persons or entities that own fishing history for a 2005 tilefish Full-time limited access permit (Category A or B), are eligible to receive an IFQ allocation based on their average landings for the 2001 through 2005 calendar years. These landings will be used to assign the IFQ allocations to each vessel under the IFQ program by dividing a vessel's landings by the total landings within their respective Category for the 2001 through 2005 calendar years (Category A (*i.e.,* Tier 1, which is allocated 66 percent of the adjusted total allowable landings (TAL)) or Category B (*i.e.,* Tier 2, which is allocated 15 percent of the adjusted TAL)) to derive a percentage. This percentage will then be applied to the adjusted TAL to derive an IFQ allocation percentage, which will then be converted to a specific number of pounds. For example, a Category A vessel that landed 20 percent of the average landings within Category A would receive an IFQ allocation equal to 20 percent of 66 percent of the adjusted TAL ($0.2 \times 0.66 \times 1{,}895{,}250$ lb (859,671 kg) = 250,173 lb (113,476 kg)), which is equal to 13.2 percent of the adjusted TAL. Persons or entities that own fishing history for a 2005 tilefish Part-time limited access permit (*i.e.,* Category C, which is allocated 19 percent of the adjusted TAL), are eligible to receive an equal IFQ allocation by dividing the percentage of the adjusted TAL allocated to Category C among those vessels that had landings over the 2001–2005 period to derive a percentage, which will also be converted to pounds. For example, if 10

vessels from Category C qualified for an IFQ allocation, each vessel owner would receive an IFQ allocation equal to 19 percent of the adjusted TAL divided by 10 (0.19/10 = 0.019), or 1.9 percent of the adjusted TAL, which is equal to 36,010 lb (16,334 kg). Landings data are based on NMFS dealer data for calendar year 2001, and NMFS IVR data for calendar years 2002–2005. For additional information, *see* item D (Appeal Permit Denial). In order to qualify for an IFQ Allocation, the person or entity that owns fishing history for a vessel issued a valid limited access tilefish permit during the 2005 permit year must have average landings, from the 2001–2005 period, that constitute at least 0.5 percent of the landings for the Category for which it was permitted. This landings requirement has been clarified from the proposed rule to ensure the intent of the Amendment 1 document is met.

C. CPH

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, is required to have applied for and received a CPH in order to be eligible for a tilefish IFQ Allocation permit. The CPH provides a benefit to a vessel owner by securing limited access eligibility through a registration system when the individual does not currently own a vessel for the reasons outlined above. Under Amendment 1, a tilefish IFQ Allocation permit would be issued to a person or entity who owns the history of a vessel associated with a 2005 tilefish limited access permit, that is in CPH, and its IFQ allocation would be determined by the limited access permit that was placed into CPH, provided it meets the respective qualification criteria for that permit as specified in item B above. As with any IFQ allocation, IFQ associated with a CPH could be transferred. IFQ associated with a CPH would count towards an individual's overall interest held in an IFQ allocation, and is constrained by the 49-percent cap on the acquisition of IFQ.

D. Appeal of a Permit Denial

Amendment 1 specifies an appeals process for applicants who have been denied a tilefish IFQ Allocation permit. Such applicants are able to appeal in writing to the NMFS Northeast Regional Administrator (RA). Under this amendment, appeals must be based on the grounds that the information used by the RA in denying the permit was incorrect. The only items subject to appeal under this IFQ program are the initial eligibility for IFQ allocations based on ownership of a tilefish limited access permit, the accuracy of the amount of landings, and the correct assignment of landings to the permit holder. The RA will review, evaluate, and render final decisions on appeals. Appeals must be submitted to the RA postmarked no later than 30 days after a denial of an initial IFQ Allocation permit application. The appeal must be in writing, must state the specific grounds for the appeal, and must include information to support the appeal. Hardship arguments will not be considered. The appeal shall set forth the basis for the applicant's belief that the RA's decision was made in error. The appeal may be presented, at the request of the applicant, at a hearing before an officer appointed by the RA. The final rule clarifies that a hearing will only be held if the applicant presents credible documentation with the hearing request to show that the RA made an error in determining the ownership of a tilefish limited access permit, the accuracy of amount of landings, or the correct assignment of landings to the permit holder. The hearing officer will make a recommendation to the RA. The RA's decision on the appeal is the final decision of the Department of Commerce.

The final regulations implementing the original FMP were effective on November 1, 2001. Effective that date, the owners of vessels issued a tilefish limited access permit were required to report their landings of tilefish for each fishing trip, via the NMFS IVR call-in system. Under Amendment 1, NMFS IVR landings data are used to determine landings for years 2002 through 2005, and NMFS dealer data are used for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the *Hadaja* v. *Evans* lawsuit). As indicated above, the data on historical landings are based on more than one source. The Council examined the different sources of data available for each year and, compared the completeness and accuracy of each source of data. The implementation of the original FMP, in November 2001, required owners of permitted tilefish vessels to submit their landings into the IVR system. Although dealer data have historically been used to calculate total landings for the purposes of setting an initial quota allocation, the Council decided to use IVR data beginning with 2002 landings to determine the initial tilefish IFQ Allocations. The rationale for this decision is that: (1) Landings reported via the IVR system were being used to monitor the tilefish quota during the 2002–2005 time period; (2) there were a significant number of documented fishing trips in the IVR that were not reported in the dealer data system, particularly for Full-time Tier 1 vessels that sold predominantly to a single dealer (especially in 2004 and 2005); and (3) the Council did not consider that fishermen would have any incentive to over-report landings via the IVR system because over-reporting of landings would have caused the fishery to close early and adversely affected those who over-reported.

Under Amendment 1, during the first year of the IFQ program only, the RA will reserve 15 percent of the TAL prior to initial distribution of IFQ allocations, to be used to allow vessels to fish under a letter of authorization (LOA), pending disposition of the applicants' appeals. Any portion of the 15-percent reserve remaining after the appeals process has been completed will be proportionately distributed back to the initial IFQ recipients as soon as possible that year. If resolution of appeals requires more than a 15-percent reserve, due either to the number of appeals filed, or the time needed to bring them to disposition, the allocations of all initial allocation holders will be reduced proportionately, as soon as possible that year, to accommodate a reserve in excess of the 15 percent. If any subsequent reduction is applied to an IFQ Allocation permit holder that has already fished his/her annual allocation, this further reduction will be treated as an overage in the subsequent fishing year (*see* Other Measures, item E). An individual whose IFQ Allocation permit application is denied will be eligible to apply for an LOA from the RA to continue to fish for tilefish, pending the resolution of his/her appeal. An LOA will only be issued to an individual that was issued a valid tilefish limited access permit for the 2008 permit year. This LOA will allow a vessel to continue to fish for tilefish. NMFS has clarified in this final rule that it has preliminarily determined that the number of individuals expected to fish under an LOA, pending an appeal, will not land a percentage of the adjusted TAL that would unreasonably diminish the allocations issued to IFQ Allocation permit holders. However, if individuals fishing under an LOA are projected to land a portion of the adjusted TAL that NMFS determines will unreasonably diminish the allocations issued to IFQ Allocation permit holders, the RA, under authority proposed in § 648.291(d)(3), will impose a trip limit to reduce the landings of individuals fishing under an LOA.

IFQ Program Administration

A. IFQ Allocation Permit Renewal and Allocation of the Tilefish IFQ TAL

In order to ensure the processing of an IFQ Allocation permit by the start of each fishing year on November 1, applicants are required to submit their application to NMFS by September 15. Applications received after September 15 may not be approved and issued in time for the beginning of the fishing year, in which case a vessel may not fish for tilefish pursuant to that permit until it is processed by NMFS and sent to the IFQ Allocation permit holder. All IFQ Allocation permits will be issued on an annual basis by the last day of the fishing year for which the permit is required. Failure to renew an IFQ Allocation permit by this date will be deemed as the voluntary relinquishing of the permit, with no possibility for reissue and renewal in a subsequent year. The allocation listed on the IFQ Allocation permit will be updated to reflect the results of applicable allocation transfers (if allocation transfers are approved) and any redistribution of allocation resulting from permanent revocation of applicable permits under 15 CFR part 904. Allocation of tilefish quota is calculated by multiplying an IFQ allocation percentage by the annual adjusted TAL. The updated IFQ Allocation permits will indicate any change in the annual commercial quota for tilefish, and any debits required as a result of prior fishing year overages (*see* Other Measures, item E). IFQ participants will be able to monitor the status of their allocations by contacting NMFS or by monitoring the NMFS Web page. IFQ Allocation permit holders will be responsible for keeping an accurate record of their landed IFQ allocation for the purposes of future leases and transfers, and to submit a percentage of their annual ex-vessel landings value to pay a cost-recovery fee at the conclusion of the calendar year.

B. Vessel Permit Renewal

A vessel owner, other than the owner of a private recreational vessel, must renew his/her tilefish vessel permit annually to possess either an incidental catch of tilefish, or to fish under a tilefish IFQ allocation authorized by an IFQ Allocation permit (*see* item A above) or a Charter/Party vessel permit in order to possess amounts of tilefish equal to the possession limit for anglers on board.

C. IFQ Transfers (Temporary and Permanent)

Under Amendment 1, IFQ allocations are fully transferable among persons or entities that are permanent U.S. citizens or permanent resident aliens, or corporations eligible to own a U.S. Coast Guard documented vessel, as long as they meet the requirements of the Magnuson-Stevens Act. Tilefish IFQ Allocation permit holders are allowed to transfer IFQ on a temporary and permanent basis by submitting an IFQ Transfer Form to NMFS. This form must contain at least the following data elements: The type of transfer; signature of both parties involved in the transfer; the cost associated with the transfer; the amount of quota to be transferred; and a list of all Federal vessel permit numbers for all vessels authorized to land tilefish pursuant to the transferred IFQ allocation. These required contents of the transfer form were revised slightly from the proposed rule to ensure that NMFS receives the vessel permit numbers for all vessels that are authorized to land tilefish pursuant to the transferred allocation. This will ensure that landings are properly attributed to the appropriate IFQ Allocation permit holder. A temporary IFQ transfer (lease) allows an IFQ Allocation permit holder to sell a temporary right to land tilefish in a specified amount to any other individual for the remainder of the fishing year in which the lease occurs. A permanent IFQ transfer allows an IFQ Allocation permit holder to permanently sell his/her entire tilefish IFQ allocation, or a portion thereof. An IFQ Allocation permit holder who wishes to lease his/her IFQ to another individual is responsible for ensuring that he/she has sufficient remaining allocation for that fishing year to lease. Any attempt to lease out quota in excess of an IFQ Allocation permit holder's existing quota will be denied by NMFS. Once all, or a portion of, an IFQ allocation is leased, the lessee will not be able to subsequently sub-lease that IFQ allocation.

D. IFQ Cost-Recovery

Under section 304(d)(2)(A) of the Magnuson-Stevens Act, the Secretary of Commerce (Secretary) is authorized to collect a fee, not to exceed 3 percent of the ex-vessel value of fish harvested, to recover the costs directly related to the management, data collection and analysis, and enforcement of IFQ programs such as the one approved in Amendment 1. The procedures for the collection of cost-recovery fees are established in this final rule. Under the Magnuson-Stevens Act, the cost-recovery fee for any IFQ that was temporarily transferred to another IFQ Allocation permit holder is the responsibility of the owner of the permanent IFQ allocation, not the lessee. Therefore, under Amendment 1, a tilefish IFQ Allocation permit holder with a permanent allocation will incur a cost-recovery fee that would be paid from the value of tilefish landings, authorized under his/her tilefish IFQ Allocation permit, including allocation that is landed under a temporary transfer of allocation. The RA will determine the recoverable costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The cost-recovery billing period is defined as the full calendar year, beginning with the start of the first calendar year following the effective date of the final regulations implementing Amendment 1.

Prior to the first year of the IFQ program, NMFS will not have information needed to determine the recoverable costs. Therefore, during the initial cost-recovery billing period, the recoverable costs are set at 3 percent. In a given cost-recovery billing period, the recoverable costs may not exceed 3 percent of the ex-vessel value of the fishery. NMFS has clarified the following description of the calculation of the cost-recovery fee so that it better represents the intent of the Council, as described in Amendment 1. The recoverable costs will be divided by the annual ex-vessel value of the fishery to derive the percentage that is recoverable. IFQ Allocation permit holders will be assessed a fee based on the recoverable cost percentage multiplied by their total allocated tilefish ex-vessel value. If the recoverable costs for the first cost-recovery billing period are determined to be less than 3 percent, NMFS will issue each IFQ Allocation permit holder a fee-overage credit, equal to the amount paid in excess of their portion of the recoverable cost, towards their subsequent year's fee. Three percent of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period, as reported to NMFS from Federally permitted dealers, is the maximum annual cost that could be recoverable in the fishery. Payment of the cost-recovery fee is a condition of an IFQ Allocation permit. NMFS will mail a cost-recovery bill to each IFQ Allocation permit holder for the IFQ cost-recovery fee incurred by that IFQ Allocation permit holder for the previous cost-recovery billing period.

IFQ Allocation permit holders are required to submit payment within 45 days of the date of the NMFS cost-recovery bill. A tilefish IFQ Allocation permit will not be renewed by NMFS (*i.e.,* not be issued), for the subsequent fishing year, until payment for the prior cost-recovery billing period fee is received in full. The bill for a cost-recovery fee may also be made available electronically, by NMFS, via the Internet. As described above, all IFQ Allocation permit holders are responsible for submitting fees for all landings associated with their permanent allocation during the calendar year (not fishing year) for later submission to NMFS, to be compliant with section 304(d)(2)(B) of the Magnuson-Stevens Act. Unless otherwise specified below, if an IFQ Allocation permit holder does not pay his/her cost-recovery fee, or pays less than the full amount due, within 45 days of the date on the bill, his/her IFQ Allocation permit will not be renewed for the subsequent fishing year, and no transfers (permanent or temporary) will be approved by NMFS involving this IFQ.

Disputes regarding fees will be resolved through an administrative appeal procedure. If, upon preliminary review of the accuracy and completeness of a fee payment, the RA determines the IFQ Allocation permit holder has not paid the amount due in full, NMFS will notify the IFQ Allocation permit holder by letter. NMFS will explain the discrepancy and the IFQ Allocation permit holder will have 30 days from the date of the letter to either pay the amount that NMFS has determined should be paid, or provide evidence that the amount paid was correct. The IFQ Allocation permit will not be renewed until the payment discrepancy is resolved. If the IFQ Allocation permit holder submits evidence in support of his/her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate IFQ fee, prepare a Final Administrative Determination (FAD). A FAD will be the final decision of the Department of Commerce. If the FAD determines that the IFQ Allocation permit holder owes fees, no tilefish IFQ Allocation permit(s) held by the IFQ Allocation permit holder will be renewed until the required payment is received by NMFS. If NMFS does not receive such payment within the 30-day time period prescribed in the FAD, NMFS will refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection. If NMFS does not receive such payment prior to the end of the next cost-recovery billing period, the IFQ Allocation permit will be considered voluntarily relinquished, and not renewable. Cost-recovery payments will be required to be made electronically via the Federal Web portal, *http://www.pay.gov,* or other Internet sites as designated by the RA. Instructions for electronic payment will be made available on both the payment Web site and the paper bill. Electronic payment options will include payment via a credit card (the RA would specify in the cost-recovery bill acceptable credit cards) or direct ACH (automated clearing house) withdrawal from a designated checking account. Payment by check could be authorized by the RA if the RA determines that electronic payment is not possible. NMFS will create an annual IFQ report and provide it to the owner of the IFQ Allocation permit. The report will include annual information regarding the amount and value of IFQ tilefish landed during the prior calendar year, the associated cost-recovery fees, and the status of those fees. This report will also detail the costs incurred by NMFS, including the calculation of the recoverable costs for the management, enforcement, and data collection and analysis, incurred by NMFS during the fishing year.

E. IFQ Allocation Acquisition Cap

Amendment 1 limits the accumulation of IFQ allocation to 49 percent of the TAL allocated to the IFQ program (after adjustments for incidental catch, research set-aside, and/or overages have been made). This allows for an IFQ allocation accumulation that is 12-percent greater than the largest yearly landing by an individual tilefish vessel during the 1988 through 1998 period. This allocation cap also allows the two vessel owners that are anticipated to receive the largest initial allocation to consolidate. Thus, Amendment 1 prohibits any entity from owning, or holding an interest in, more than 49 percent of the tilefish IFQ TAL at any time. Having an interest in an IFQ allocation (permanent or temporary) is defined so as to include allocation held in the following ways: (1) In an IFQ allocation permit holder's name; (2) as a shareholder, officer, or partner of a company; (3) by an immediate family member; or (4) as an owner or a part owner of a company. Temporary and permanent IFQ transfers shall be monitored by NMFS to ensure that a transferee does not exceed this allocation acquisition limit at any point during a fishing year. A declaration of interest in IFQ allocation(s), listed by IFQ Allocation permit number, is required annually, at the time IFQ Allocation permits are renewed.

F. Periodic Review of the IFQ Program

The Magnuson-Stevens Reauthorization Act established national guidelines for the implementation of a LAPP. The Magnuson-Stevens Act now includes provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program. The Magnuson-Stevens Act further requires a formal and detailed review within 5 years of the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years). Amendment 1 institutes a provision for regular review and evaluation of the performance of the IFQ program. The measures for review may include, but are not limited to: Capacity reduction; safety at sea issues; transferability rules; ownership concentration caps; permit and reporting requirements; and fee and cost-recovery issues. Other items may be added to address problems and/or concerns with the IFQ program that are unforeseeable at this time. The formal review shall be conducted by the Council.

Recreational Measures

A. Charter/Party Vessel Permit Requirements

Amendment 1 requires that any owner of a party or charter vessel carrying fishermen for hire that fishes for tilefish within the U.S. EEZ obtain a valid Federal tilefish open access Charter/Party permit from NMFS. A private recreational vessel, other than a party or charter vessel (vessel for hire) fishing in the EEZ, is exempt from this permitting requirement; however, it cannot land more than the recreational tilefish landing limit (*see* Item B below), multiplied by the number of persons on board, per trip. A charter/party vessel could have both a Federal Charter/Party permit and a commercial permit to catch and sell tilefish under an IFQ Allocation permit. However, such a vessel could not fish under the IFQ Allocation permit if it is carrying passengers for a fee. Amendment 1 requires that Federal Charter/Party permitted vessels report tilefish landings on NMFS-issued Fishing Vessel Trip Report (VTR) forms. The collection of this information will provide valuable data to determine the

number of vessels and level of activity in the recreational tilefish fishery.

B. Recreational Bag Limits

Amendment 1 institutes a recreational landing limit of eight tilefish per person per trip. NMFS VTR data between 1996 and 2005 indicate that recreational tilefish landings by charter/party vessels have ranged from 81 to 994 tilefish per year. Mean angler catches onboard charter/party vessels have ranged from approximately one fish per angler, in most years, to eight fish per angler. Therefore, the recreational bag limit of eight tilefish per person per trip is at the upper range of the mean effort seen in the last 10 years.

EFH Measures

A. EFH Designations

Amendment 1 modifies the current EFH designations based on the incorporation of new information and a re-examination of information that was used to develop the original EFH descriptions in the FMP. The new designations rely on temperature and sediment type as a stronger indicator of EFH for tilefish, with depth as a secondary correlate. The depth that corresponds to the revised temperature profile is between 100 and 300 m. Specific locations and maps for the new proposed EFH designation can be found in Amendment 1.

B. HAPC

Amendment 1 designates HAPC for juvenile and adult tilefish as clay outcrop/pueblo village habitats within Norfolk, Veatch, Lydonia, and Oceanographer Canyons at the depth range specified for tilefish EFH (100–300 m). Amendment 1 contains locations and maps that depict these areas.

C. Gear Restricted Areas (GRAs)

The Magnuson-Stevens Act requires that Councils evaluate potential adverse effects of fishing activities on EFH and include in FMPs management measures necessary to minimize adverse effects to the extent practicable. Specifically for tilefish, clay outcroppings (pueblo habitats) have been determined to be highly vulnerable to permanent disturbance by bottom-tending mobile gear such as the bottom otter trawl, as described in Amendment 1. Therefore, several GRAs are approved to minimize impacts on juvenile and adult tilefish EFH from bottom trawling activity. These closed areas do not follow the depth contours exactly, but are designed as polygonal areas that approximate the areas and depths described, while allowing for straight boundaries for enforcement purposes. In addition, because these areas are closed polygons, any areas within those GRAs that are deeper than the maximum depth that defines tilefish EFH are also closed to bottom trawling activity, even though they are not defined as EFH. Amendment 1 prohibits bottom trawling, within and adjacent to the four Canyons identified as HAPC, at depths associated with the revised EFH designation. These GRAs were considered because of the potential for current or future bottom otter trawling activity to impact clay outcroppings within these canyon areas. Three Canyons—Norfolk, Veatch, and Lydonia—are known to have tilefish ''pueblo burrows'' that are formed in exposed clay outcroppings. In addition, clay outcroppings are known to exist in Oceanographer Canyon. The GRA closures are bounded by the coordinates listed below.

Canyon	N. Lat.			W. Long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

Other Measures

A. Frameworkable Measures

Amendment 1 requires additional management measures to be identified in the FMP that could be implemented or adjusted at any time during the year through the framework adjustment process. The recreational management measures that are added to the list are: (1) Recreational bag limit; (2) fish size limit; (3) seasons; and (4) gear restrictions or prohibitions. The additional measures that would facilitate the periodic review of the IFQ program are: (1) Capacity reduction; (2) safety at sea issues; (3) transferability rules; (4) ownership concentration caps;

(5) permit and reporting requirements; and (6) fee and cost-recovery issues. Adding these measures to the list of measures that could be addressed via the framework adjustment process will provide flexibility to managers to address potential changes in the fishery in a timely manner.

B. Submission of Catch Reports

The description of this measure is slightly revised from the proposed rule to clarify the intent of the reporting changes. The current FMP requires that the owner or operator of any vessel issued a limited access permit for tilefish submit a tilefish catch report, via the IVR system, within 24 hr after returning to port and offloading. Amendment 1 eases this requirement to require that tilefish catch reports be submitted via the IVR within 48 hr after offloading. This allows for tilefish fishermen to report catch via the IVR after the fish have been weighed by the dealer to allow for a more accurate report of landings via IVR. This alternative is expected to allow fishermen to provide better data. Amendment 1 also requires that the VTR serial number be inputted into the IVR system in order for this to be used as a trip identifier to match all reported IVR landings to dealer reports. In addition, the dealer number is required to be inputted into the IVR system, which will allow for better matching of IVR data to dealer (weighout) data on a trip-by-trip basis. These reporting changes will ensure that amounts of tilefish landed, and ex-vessel prices, are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively, and will ensure an accurate association of tilefish landings with IFQ Allocations.

C. No Discard Provision

Amendment 1 prohibits any commercial vessel from discarding tilefish. The description of this measure in this final rule is revised to exclude vessels from this prohibition if they are fishing pursuant to the incidental catch limit, or under an LOA trip limit, if one is instituted by the RA. This is intended to prohibit the practice of highgrading, whereby low-value tilefish are discarded so that higher-value tilefish may be retained. Current NMFS data show that commercial discard of tilefish is almost non-existent. Therefore, this is an opportune time to prohibit commercial discards.

D. Monitoring of Tilefish Commercial Landings

The management unit for this FMP is defined as all golden tilefish under U.S. jurisdiction in the Atlantic Ocean north of the Virginia/North Carolina border. Tilefish south of the Virginia/North Carolina border are currently managed as part of the FMP for the Snapper-Grouper Fishery managed by the South Atlantic Fishery Management Council. Currently, the FMP does not restrict fishermen that hold both a Federal Northeast tilefish permit and a Southeast Federal snapper/grouper permit, to fish for tilefish both inside and outside of the TMU, as defined in § 648.2, on the same trip. If tilefish landings are not properly reported to indicate where each species is caught, the recovery of the stock could be adversely affected. To avoid these reporting problems, Amendment 1 requires vessels that catch tilefish from the TMU to land tilefish within the TMU only, and prohibits combination trips in which vessels fish both inside and outside the TMU for golden tilefish on the same trip. Furthermore, Amendment 1 prohibits dealers from purchasing or otherwise receiving for commercial purposes tilefish caught in the EEZ from outside of the TMU, as described in § 648.2, unless otherwise permitted under 50 CFR part 622. These new requirements ensure that all tilefish landings are reported in the appropriate management unit.

E. Overages

Under Amendment 1, an IFQ allocation that is exceeded will be reduced by the amount of the overage in the subsequent fishing year. If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ Allocation permit is issued for the subsequent fishing year, a revised IFQ Allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation cannot be reduced in the subsequent fishing year because the full allocation had already been landed or transferred, the IFQ Allocation permit would indicate a reduced allocation for the amount of the overage in the next fishing year. If quota is temporarily transferred and the lessee exceeds a permit holder's temporary IFQ allocation, the overage would be deducted from the allocation of the permanent IFQ Allocation permit holder who leased the IFQ allocation.

Comments and Reponses

A total of 16 relevant comment letters were received from limited access tilefish vessel owners, an attorney representing industry, non-government environmental organizations, captain and crew, and other interested members of the public on Amendment 1 and the proposed rule. One comment letter was received that is not legible or relevant. A comment letter that was received from a non-government environmental organization was only partly relevant to the approved measures contained within Amendment 1; only the relevant comments will be addressed below.

General Comments

Comment 1: Three comments supported Amendment 1, based on the qualification time period chosen by the Council. One of these commenters stated that this time period was fair and equitable for all participants and that individuals that are in opposition to the qualification time period, and who have fished since 2005, are primarily motivated to obtain IFQ allocation for financial gain. This commenter stated that the preferred alternative rewards individuals that fish for tilefish for 100 percent of their income.

Response: The adoption of any LAPP has the potential to benefit certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 1 it chose to allocate the initial tilefish IFQ in a manner that emphasizes recent participation in the tilefish fishery as opposed to historical participation. The Council has the latitude to weigh these allocation decisions, so long as they are justified with sufficient analysis. NMFS had determined that the Council properly analyzed and justified the allocation alternatives in Amendment 1.

Comment 2: Eight commenters opposed Amendment 1, due to the Council's decision to base the qualification period on landings from 2001 to 2005. Some of these commenters stated that the tilefish stock was in a rebuilding plan during this time period, and that it was not appropriate to fish for tilefish during this time. These industry members stated that they voluntarily ceased tilefish fishing during this time frame, in part, to lessen fishing pressure on the overfished tilefish stock. These commenters were highly critical of the Council's decision to ''reward'' those who fished during this time period. Instead they believe that the initial IFQ allocation should be distributed to those with historic participation in the fishery. One of the commenters specifically noted that the Barnegat Light, NJ, tilefish fleet reduced fishing effort between 2000 and 2005, while the Montauk, NY, tilefish fleet did not, and that the Montauk Port, NY, fleet stands to receive a monopoly of tilefish permits under Amendment 1. Another commenter stated that vessels in Montauk, NY, stand to receive 80

percent of the IFQ allocation under Amendment 1, and that the allocation should have been divided up more equitably. Finally, one commenter noted that, in using the 2001–2005 time period to qualify IFQ allocations, Amendment 1 would allocate significantly more quota to the Part-time vessels than to a specific vessel in the Full-time tier 2 category.

Response: The adoption of any LAPP has the potential to benefit certain fishermen, while disadvantaging others. This effect is recognized in the National Standard 4 guidance in § 600.325(c)(3)(i)(B). The Council analyzed the positive and negative consequences of its decisions and chose to allocate the initial tilefish IFQ in a manner that emphasizes more recent participation in the tilefish fishery as opposed to more historical participation. As noted in section 303A(c)(5) of the Magnuson-Stevens Act, factors such as current and historic participation need only be ''considered.'' There is no requirement that a Council has to provide for historical participants. The Council has considered both current and historical participants in the tilefish fishery in determining the allocation scheme. The Council has the latitude to weigh these allocation decisions, so long as they are justified with sufficient analysis. In response to the commenter who asserted that the Montauk, NY, tilefish fleet would gain a monopoly of not only the Full-time, but the Part-time permits, NMFS will qualify individuals for IFQ allocations based on the approved measures contained in this final rule. At this time, NMFS has not made a determination as to the specific individuals that will qualify for an IFQ Allocation permit; however, according to the analysis contained in Amendment 1, and NMFS's permit records, the majority of the Part-time limited access permits that may qualify for an IFQ Allocation permit are held by vessels that are ported in Barnegat Light, NJ. NMFS approved Amendment 1 because the Council's analysis was consistent with the Magnuson-Stevens Act, and other applicable law, and the action promotes a sustainable tilefish fishery.

Comment 3: Four individuals commented that a Council member involved in the development of Amendment 1 made biased decisions based on personal gain or agenda.

Response: There is no evidence to support bias of a Council member in the development of Amendment 1. The Amendment was adopted by a majority of all Council members present. The Council's decisions were based on numerous meetings, open to the public, and on information, comments, and input provided by the public.

Comment 4: One commenter stated that the IFQ allocation will be distributed in a manner that would give a few individuals the power to completely control the market for tilefish.

Response: Amendment 1 sets an individual allocation accumulation limit at 49 percent of the TAL (adjusted). In setting this limit, the Council considered the potential market power impact that an individual entity could have when accumulating tilefish IFQ allocation, and considered the historical fishing practices in the fishery. Due to the large number of substitutes for tilefish that are available in the marketplace, the Council does not expect that any level of IFQ ownership in the tilefish fishery would allow a single harvester to control the market price for tilefish.

Comment 5: One comment stated that the Council should have allocated the IFQ to the captain and crew of tilefish vessels that landed tilefish during the qualification period, or the Council should not have adopted an IFQ program in Amendment 1.

Response: The Council did not consider allocating the initial tilefish IFQ to captains and/or crewmembers in the tilefish fishery. The landings history of a vessel is owned by the owner of record of the vessel. For example, the landings and permit history of a vessel is presumed to transfer with the vessel whenever it is sold by the owner. Therefore, the captain and crewmembers of a vessel could not qualify for an IFQ allocation unless the Council chose qualification criteria that were not associated with vessel landings. The Council could have chosen to allocate the IFQ in any manner that was consistent with the Magnuson-Stevens Act. The Council did consider alternatives that would have limited the universe of entities that could receive IFQ allocation through transfer and lease to include established captains and crew. These alternatives were not selected due to the difficulty in determining what constitutes an established fisherman. Due to the complexities involved in determining what constitutes an established fishermen, the Council determined that the administrative burden to NMFS would be prohibitively high, as there is currently no similar program that verifies identities and work histories.

Comment 6: One comment, in opposition to Amendment 1, asserted that ''ITQs [IFQs] are forever.'' Another comment from a non-government environmental organization contended that the IFQ program would privatize valuable public resources in perpetuity.

Response: As stated in Amendment 1, IFQ privileges would be assigned for the duration of the IFQ program. The IFQ program would remain in effect until it is modified or terminated. The program may be modified after going through an administrative review of the operation of the program. As indicated in the approved measures, the Magnuson-Stevens Act requires a formal program review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant FMP. The IFQ allocations are not granted in perpetuity. According to the Magnuson-Stevens Act, a limited access privilege is a permit issued for a period of not more than 10 years. The permit can be renewed before the end of that period, unless it has been revoked, limited, or modified as provided by the Magnuson-Stevens Act (section 303A(c)(7)(f)). Further, the Council has the discretion to revise or replace the IFQ program if it determines that a different management strategy better suits the objectives and the provisions of the Magnuson-Stevens Act.

Comment 7: One commenter asked to have his support removed for the approved measure that will distribute the Part-time limited access permit category quota equally. He asked that his support be shifted to the alternative within Amendment 1 that would have allocated the Part-time permit category quota based on the average landings by Part-time limited access vessels during the qualification period. The commenter stated that he did not properly anticipate the financial impact on his business that would result from the adopted measure, and that he will suffer a disproportionate drop in income.

Response: The Council's decisions were based on numerous meetings, open to the public and on information, comments, and input provided by the public. Voting on a prospective management program is not a referendum. NMFS approved Amendment 1 because it is consistent with the Magnuson-Stevens Act and promotes a sustainable tilefish fishery.

Comment 8: A commenter stated that, due to the present state of the economy, Amendment 1 is not appropriate at this time, as it will result in a loss of income for individuals that do not qualify for an initial IFQ Allocation permit.

Response: As stated in the response to Comment 1, the adoption of any LAPP has the potential to benefit certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions and chose to allocate the initial tilefish

IFQ in a manner that emphasizes more recent participation in the tilefish fishery as opposed to more historical participation. The Council has the latitude to weigh these allocation decisions, so long as it conducts the proper analyses and justifies them.

Comment 9: Two commenters asked, if the Council wanted to use the most recent timeframe for determining landings that qualify an individual for an IFQ allocation, why did they not use 2006 through 2009 landings.

Response: The process of developing a fishery management plan is long and dynamic. As the program is being developed, adapted, and implemented, new data are becoming available. There is no obligation on the part of the Council to continually update the information to be used in the development of a program. Otherwise, the program could never be finalized. It is only when new information indicates drastic changes in the fishery that it needs to be incorporated into the program. The Council identified no such changes represented by the 2006 through 2009 landings data.

Comment 10: An attorney representing an industry group (attorney) contended that the qualification time period chosen in Amendment 1 will disadvantage vessels that are ported in Barnegat Light, NJ, relative to vessels that are ported in Montauk, NY. The attorney, and a non-governmental environmental organization, requested that NMFS disapprove the portions of Amendment 1 that implement the IFQ program as they are inconsistent with the Magnuson-Stevens Act in that the IFQ program is neither fair nor equitable, as required under National Standard 4 (section 301(a)(4)), section 303(b)(6), and section 303A(c)(5) of the Magunson-Stevens Act.

Response: National Standard 4 and sections 303(b)(6) and 303A(c)(5) of the Magnuson-Stevens Act require that the purpose for, reasoning of, and consideration of management measures be fair and equitably applied to all fishermen, not that the outcome, result, or affects of the management measures be fair and equitable to all such fishermen. As noted in section 303A(c)(5) of the Magnuson-Stevens Act, factors such as current and historic participation need only be ''considered.'' There is no requirement that a Council has to provide for historical participants. The Council has considered both current and historical participants in the tilefish fishery in determining the allocation scheme. The adoption of any limited access privilege program has the potential to benefit certain fishermen, while disadvantaging others. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 1 it chose to allocate the initial tilefish IFQ in a manner that emphasizes more recent participation in the tilefish fishery as opposed to more historic participation. The National Standard 4 guidelines at § 600.325(c)(3)(i)(B) state that:

> An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as fair and equitable, if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo.

Therefore, the Councils are given wide latitude to determine what is equitable within a particular fishery and to create the appropriate management measures to accomplish the goals of a FMP.

Comment 11: The attorney commented that the Council did not provide adequate rationale for its decision to disregard the language contained in the original Tilefish FMP that stated that any future tilefish amendments would only include a formal qualification based on 1984 to 1998 landings data.

Response: Fishery Management Councils make recommendations to the Secretary, which are advisory only. The actions of a particular Council do not constitute prior practice from which it cannot deviate without sufficient rationale. It is solely within the prescription of the Secretary to approve, disapprove, or partially approve the recommendation of a Council.

Comment 12: The attorney, and a non-governmental environmental organization, commented that the IFQ program results in excessive geographic consolidation, as prohibited by section 303A(c)(5)(B)(ii) of the Magnuson-Stevens Act, and results in affects to fishing communities that are inconsistent with National Standard 8 (section 301(a)(8)) of the Magnuson-Stevens Act.

Response: NMFS determined that the approved measures in Amendment 1 are consistent with National Standard 8 of the Magnuson-Stevens Act, and that Amendment 1 does not result in excessive geographic consolidation. Excessive geographic consolidation need only be considered in looking at the basic cultural and social framework in the fishery. The approved measures in Amendment 1 distribute IFQ allocation proportionately among those qualifying individuals who have historically or who currently participate in the tilefish fishery, regardless of the location of their principle port of landing or home state. The IFQ qualification criteria do not differentiate among U.S. citizens, nationals, resident aliens, or corporations based on their State of residence, or incorporation, and they do not rely on a statute or regulation that discriminates against residents of another State. The Amendment 1 document fully analyzes the effects of the IFQ program on fishing communities, port structure, employment, income, and other socio-economic variables. Amendment 1 considered whether the management measures would create an excessive geographic consolidation in the fishery. The analysis within section 6.5.1 of Amendment 1 concluded that the total value of all tilefish landings in Barnegat Light, NJ, during 2000–2005, represented only 2.1 percent of all species landed, and that the majority of the commercial tilefish quota was landed in Montauk, NY. In addition, during this time period, 11 percent of the total commercial tilefish landing value was associated with landings in Barnegat Light, NJ. The adopted measure will allocate the Part-time category equally among all vessels that meet the qualification criteria, and the majority of the vessels within the Part-time category are currently ported in Barnegat Light, NJ. The Council analyzed the positive and negative consequences of its decisions, and in Amendment 1 it chose to allocate the initial tilefish IFQ in a manner that emphasizes recent participation in the tilefish fishery, as opposed to historic participation. The attorney commented that, under Amendment 1, ''66 percent of the fishery would end up in Montauk, NY.'' This comment is consistent with the current port/landings structure of the tilefish fleet. Currently, all of the vessels permitted in the Full-time tier 1 category are ported in Montauk, NY. This category has received 66 percent of the tilefish commercial adjusted TAL annually since the inception of the original Tilefish FMP in FY 2001. In addition, under Amendment 1, the current Part-time category will initially be allocated 19 percent of the adjusted TAL. Although the commenter is correct that the vessels that have not fished recently and/or did not fish during the 2001–2005 time period in the Part-time category will not qualify for an IFQ allocation under this final rule, the

majority of the active permits would qualify for an equal share of 19 percent of the adjusted TAL. As stated in the Amendment 1 document, disenfranchisement of the inactive vessels is an unquantifiable impact, as it is difficult to quantify the impact of removing a tilefish limited access permit from an individual who does not fish for tilefish. Therefore, for these reasons and the rationale contained in the Amendment 1 document, NMFS has determined that Amendment 1 would not result in excessive geographic consolidation of the tilefish fishery. The Council's analysis within Amendment 1 is compliant with National Standard 8, and section 303A(c)(5)(B)(ii) of the Magnuson-Stevens Act, as it considered the importance of fishery resources to fishing communities. In addition, while proper analysis is required by the Magnuson-Stevens Act, and is contained in Amendment 1, the National Standard 8 guidelines at § 600.345(b)(2) state that the standard does not constitute a basis for allocating resources to a specific fishing community, nor for providing preferential treatment based on residence in a fishing community. The analysis contained within Amendment 1 concluded that the economic impacts of the commercial tilefish fishery relative to employment and wages is difficult to determine; however, the analysis concludes that only a small amount of the region's fishing vessel employment, wages, and sales are dependant on tilefish, since the relative contribution of tilefish to the total value and poundage of finfish and shellfish is very small. As stated above, from 2000 through 2005, only 2.1 percent of the total value of seafood landings in Barnegat Light/Long Beach, NJ, were associated with tilefish. The other species with the highest commercial landings in Barnegat Light/Long Beach, NJ, are sea scallops, monkfish, and swordfish. The longline gear used in the directed tilefish fishery is also used in the tuna and swordfish fisheries. Therefore, the community impacts associated with the potential reduction in tilefish landings, and a reduction in inactive tilefish permitted vessels, may be mitigated somewhat by vessels that transition to fish for other species, such as those listed above. During the time period selected by the Council to qualify individuals for an IFQ allocation, approximately six vessels landed the majority of the commercial tilefish quota. The majority of these landings were made in Montauk, NY. The analysis concerning the economic impacts to specific ports, as a result of the approved measures, are described in section 6.5.1 of the Amendment 1 document. The allocation scheme adopted under Amendment 1 is consistent with the requirements under section 303A(c)(5)(A) of the Magnuson-Stevens Act to consider the current and historic participation of fishing communities. NMFS does not concur with the commenter that Congress, by enacting the provisions contained in section 303A, and National Standard 8 of the Magnuson-Stevens Act, intended to prevent an IFQ allocation distribution similar to that adopted under Amendment 1. NMFS has determined that the socio-economic effects of the approved measures on selected fishing ports and regions need to be analyzed in the context of what would maximize benefits to fishing communities as a whole, consistent with the National Standard 4 guidelines. NMFS has determined that reducing the overcapacity in the tilefish fishery, preventing the race-to-fish mentality, and reducing or eliminating the derby-style fishery is beneficial for fishing communities within the Northeast Region.

Comment 13: The attorney, and a non-governmental environmental organization, commented that the IFQ program results in excessive shares and impermissible concentration of harvest privileges, as prohibited by National Standard 4 (section 301(a)(4)), and section 303A(c)(5)(D)(ii) of the Magnuson-Stevens Act.

Response: National Standard 4, and section 303A(c)(5)(D)(ii) of the Magnuson-Stevens Act, require that allocations in LAPPs be distributed in such a manner that no particular individual, corporation, or other entity acquire an excessive share of the limited access privilege. NMFS has determined that Amendment 1 meets this requirement, as under Amendment 1, a specific maximum percentage (49 percent of the adjusted TAL) of the total limited access privilege that may be held by any one entity is identified. In setting this limit, the Council considered the potential market power impact that an individual entity could have when accumulating tilefish IFQ allocation, and considered the historical fishing practices in the fishery. Due to the large number of substitutes for tilefish that are available in the marketplace, the Council does not expect that any level of IFQ ownership in the tilefish fishery would allow a single harvester to control the market price for tilefish. The Council also concluded that setting a 49-percent IFQ share cap would provide tilefish vessels with an opportunity to accumulate shares above what some specific vessels had landed in recent history to allow for a reduction in capacity within the tilefish fishery. As such, the Council considered management objectives in their analysis of what cap level would be appropriate in the fishery. The Council identified that a management objective of the IFQ program was economic efficiency, and that allowing for some future consolidation, through transfer of share above the current level of ownership in the fishery, would encourage less efficient operators to transfer their allocation to more efficient operators.

Comment 14: The attorney, and a non-governmental environmental organization, commented that the IFQ program raises serious antitrust concerns that have been submitted to the U.S. Department of Justice, Antitrust Division, in accordance with section 303(A)(c)(9) of the Magnuson-Stevens Act.

Response: Although NMFS concurs with the commenters that section 303A(c)(9) of the Magnuson-Stevens Act does not preclude the application of antitrust laws to LAPPs, NMFS does not consider Amendment 1 to violate any antitrust laws for the reasons stated in the response to Comments 12 and 13.

Comment 15: NMFS received a comment from a non-governmental environmental organization that urged NMFS to adopt the GRA conservation measures in Amendment 1 while expanding their coverage to prohibit bottom-tending mobile gear in all 13 deepwater canyons.

Response: The EFH regulations at § 600.815(a)(2)(ii) require NMFS to ensure that each FMP minimize, to the extent practicable, adverse effects from fishing on EFH, including EFH designated under other Federal FMPs. Under Amendment 1, the Council conducted a practicability analysis, described in section 7.18.6 of Amendment 1, to determine which areas, if any, should be closed to bottom-tending mobile gear. This analysis included a determination of whether none, some, or all of the 13 deepwater canyons that contain pueblo/clay outcrop habitat for tilefish should be closed to bottom-tending mobile gear. The Magnuson-Stevens Act requires that Councils evaluate potential adverse effects of fishing activities on EFH and include in FMPs management measures necessary to minimize adverse effects to the extent practicable. Specifically for tilefish, clay outcroppings (pueblo habitats) have been determined to be highly vulnerable to permanent disturbance by bottom-tending mobile gear such as the bottom otter trawl, as

described in Amendment 1. Under Amendment 1, the Council adopted measures to close the four canyons that are known to contain tilefish pueblo or clay outcrop habitat as these closures were determined to be highly practicable. The other deepwater canyons were not selected, as they are not known to contain these habitats, and their closure would not have been as practicable. Also, since these other canyons are not known to contain pueblo or clay outcrop habitat, a rationale for closing these areas does not appear to exist. Absent such a basis, a closure of these areas appears to be indefensible under the ''arbitrary and capricious'' standard of the Administrative Procedure Act.

Comment 16: NMFS received a comment from a non-governmental environmental organization that urged NMFS to adopt the HAPC conservation measures in Amendment 1, while requesting that they be expanded. The commenting organization contended that all 13 canyons should be designated as HAPC, as they meet at least one of the sensitivity criteria specified in § 600.815(a)(8), and that all of the canyons are known to contain clay outcrop/pueblo habitat.

Response: The Council considered several action alternatives to designate HAPC within tilefish EFH. The Council decided to designate HAPC in the four canyons that are known to contain clay outcrop/pueblo habitats that are considered highly vulnerable to the adverse impacts of bottom-tending mobile gear. The canyons that are not known to contain clay outcrop/pueblo habitat were not designated as HAPC. The Amendment 1 document states that, if clay outcroppings are identified in the future in these other canyons, they could be designated as additional HAPCs through a framework action or amendment to the FMP. NMFS is not able to expand the designated areas, as its authority, based on a delegation from the Secretary, is limited to approval, disapproval, or partial disapproval of Amendment 1.

Comment 17: NMFS received a comment letter from a non-governmental environmental organization that urged NMFS to close all 13 deepwater canyons to bottom-tending mobile gear to protect deepwater coral communities.

Response: The Council exercised its discretion not to include measures to protect deepwater coral communities in Amendment 1, since it is not a required provision of an FMP or amendment. Amendment 1 to the Tilefish FMP was developed primarily to implement a LAPP in the fishery. As required by § 600.815(a)(10), NMFS reviewed the EFH provisions of the tilefish FMP and, within Amendment 1, revised and amended the EFH provisions as warranted based on available information. Under Amendment 1, the Council considered the impacts of fishing gear to juvenile and adult tilefish EFH to determine whether any GRAs should be identified. The Council analyzed several alternatives, including whether to close none, some, or all of the 13 deepwater canyons to bottom-tending mobile gear to protect tilefish pueblo/clay outcrop habitat. Although the Council did not explicitly consider alternatives to protect deepwater coral habitat in this amendment, the adopted GRAs will have the indirect benefit of protecting deepwater species such as sponges and corals from the impacts of bottom-tending mobile gear.

Comments on Proposed Measures and Regulations

Comment 18: Two commenters stated that the regulation at § 648.291(b)(1), that requires an IFQ Allocation permit holder to declare all vessel(s) that they own, or lease, that will land their allocation, by providing a list to NMFS at the beginning of each fishing year, could be a problem in the case where a vessel was lost or broken down during the fishing year. The commenter also questioned whether the allocation could be transferable under this condition.

Response: NMFS revised the regulations at § 648.291(b)(3) to clarify that all Federal vessel permit numbers that are listed on the IFQ Allocation permit are authorized to possess tilefish pursuant to the IFQ Allocation permit until the end of the tilefish fishing year, or until NMFS receives written notification from the IFQ Allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject IFQ Allocation permit. An IFQ Allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit must send written notification to NMFS that includes the vessel permit number and the dates on which the vessel may fish for tilefish pursuant to the IFQ Allocation permit. In addition to this requirement, allocation is transferable under § 648.291(e).

Comment 19: Two commenters stated that the regulation at § 648.291(d)(4) that reserves 15 percent of the IFQ TAL to allow an individual to continue to fish under an LOA, pending resolution of an appeal, should not be deducted from the overall IFQ TAL. Rather, the 15-percent reserve should be proportionally reserved from each of the three limited access categories. This would allow for 66 percent of the 15-percent reserve (9.90 percent of the IFQ TAL) to be applied to the Full-time tier 1 category; 15 percent of the 15 percent reserve (2.25 percent of the IFQ TAL) to be applied to the Full-time tier 2 category; and for 19 percent of the 15 percent reserve (2.85 percent of the IFQ TAL) to be applied to the Part-time category. This alternate method for reserving 15 percent of the IFQ TAL would allow for the reserve to be ultimately deducted from the category for which the appeals are submitted.

Response: NMFS has determined that this revision to the rule would not be consistent with the intent of the Council, as described in the Amendment 1 document. Although the Council was not specific as to how the 15-percent reserve should be deduced from the IFQ TAL (*i.e.,* either from the overall IFQ TAL, or proportionately from the contribution of each limited access category), NMFS has determined that the intent of the reserve is to allow vessels to continue to fish pursuant to a LOA, pending the resolution of appeals. The Council did specifically intend, as described in Amendment 1, that, if the resolution of appeals requires more than a 15-percent reserve, the allocations of all initial IFQ Allocation permit holder's would be reduced proportionately to accommodate the required allocation in excess of the 15-percent reserve. Therefore, the reserve is not specific to a particular category, but rather is to be deducted from the overall IFQ TAL at the beginning of the initial year of the IFQ program only. NMFS has determined that the majority of the vessels that would be likely to appeal their IFQ Allocation permit applications are currently permitted in the Part-time category. The 15-percent reserve was designed to allow these vessels an ability to continue to fish, pursuant to an LOA, until their appeals are resolved. NMFS determined that, if only 19 percent of the 15-percent reserve (2.85 percent of the IFQ TAL) was accessible to the majority of vessels fishing under an LOA, these vessels would not have the ability to continue to fish while their appeal is resolved, contrary to the intent of the Council.

Comment 20: One commenter opposed the initial cost-recovery fee of 3 percent of the landed value of the IFQ allocation, as described in § 648.291(h). The commenter stated that NMFS should estimate this cost prior to the implementation of the IFQ program.

Response: As described in Amendment 1, and as stated in this final rule, NMFS will not know the actual cost of the management, data collection

and analysis, and enforcement, of the tilefish IFQ program until after the end of the first year of the program. If the recoverable costs are determined to be less than 3 percent of the ex-vessel value of the fishery, NMFS will issue each IFQ Allocation permit holder a fee-overage credit, equal to the amount paid in excess of their portion of the recoverable cost, towards their subsequent year's fee.

Changes From Proposed Rule to Final Rule

In § 648.2, the definition of ''interest in an IFQ allocation,'' is revised to define what an immediate family member is.

In § 648.2, the definition of ''bottom-tending mobile gear,'' and ''Interest in an IFQ allocation,'' are revised to correct syntax errors.

In § 648.4, paragraph (a)(12) is revised to correct syntax errors.

In § 648.7, paragraph (b)(2)(ii) is revised to correct syntax errors.

In § 648.14, paragraph (u)(2)(v) is revised to replace ''golden tilefish,'' with ''tilefish.''

In § 648.14, paragraph (cc)(11) is revised to clarify that a vessel fishing subject to a trip limit is not prohibited from discarding tilefish.

In § 648.290, paragraph (b) is revised to replace ''TAC,'' with ''amount,'' so that the term is consistent with other portions of the regulatory text.

In § 648.291, paragraph (a)(1)(i) is revised to clarify that a person or entity meets the qualification criteria if they own a vessel with permit and fishing history containing a valid tilefish limited access permit for the 2005 permit year and qualifying landing amount, or if they currently hold a valid CPH for the fishing history associated with a vessel that was issued a valid tilefish limited access permit for the 2005 permit year that has a qualifying landing amount. In addition, ''quota,'' within this paragraph was replaced with ''landings,'' to better reflect the intent of the Council as described within Amendment 1.

In § 648.291, paragraph (a)(1)(ii) is revised to clarify the intent.

In § 648.291, paragraph (b)(1) is revised to clarify what each IFQ Allocation permit application must include.

In § 648.291, paragraph (e)(4)(i) ''proof of eligibility to receive IFQ allocation,'' is replaced with, ''indicate eligibility to receive IFQ allocation.''

In § 648.291, paragraph (b)(3) is revised to add the requirement that IFQ Allocation permit holders must notify NMFS in writing if they wish to remove a Federal vessel permit number from the list of vessels that may possess tilefish pursuant to their IFQ Allocation permit. This section was also revised to specify that an IFQ Allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit must send written notification to NMFS that includes the vessel(s) permit number, and the dates on which the vessel(s) is authorized to land tilefish pursuant to the IFQ Allocation permit.

In § 648.291, paragraph (h)(1) is revised to clarify how NMFS will determine the cost-recovery fee.

In § 648.291, paragraph (c)(1)(i) is revised to clarify the intent.

In § 648.291, paragraph (d)(2) is revised to clarify that a hearing will only be held if the applicant presents credible documentation with the hearing request to show that the RA made an error in determining the ownership of a tilefish limited access permit, the accuracy of amount of landings, or the correct assignment of landings to the permit holder.

In § 648.291, text within paragraph (d)(3) is moved to paragraph (d)(4).

In § 648.291, paragraphs (e)(2), (e)(2)(i) and (e)(3)(iii) are revised to clarify the intent.

In § 648.291, paragraph (g) is revised for a syntax error.

In § 648.291, paragraph (h) is revised to clarify that an IFQ Allocation permit holder will incur a cost-recovery fee for his/her permanent allocation that he/she leased to another IFQ Allocation permit holder, if it is landed.

In § 648.291, paragraph (h)(1) is revised to clarify that, if the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program are greater than 3 percent of the ex-vessel value of the fishery, only 3 percent will be recoverable.

In § 648.291, paragraph (h)(3) is revised to clarify the intent.

Section 648.292 is removed and reserved to negate the RA's authority to close the EEZ to tilefishing, as this is not consistent with the intent of the IFQ program as described in Amendment 1.

In § 648.294, paragraph (a)(1) is revised to clarify that management measures may be adjusted, but not implemented, under the framework process.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, NMFS has determined that this final rule is consistent with the FMP, and other provisions of the Magnuson-Stevens Act, and other applicable law. NMFS, in making that determination, has taken into account the data, views, and comments received during the public comment period.

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

An NOA was published in the **Federal Register** on May 4, 2009 (74 FR 20448), and a proposed rule was published in the **Federal Register** on May 18, 2009 (74 FR 23147). Public comments were solicited on the amendment, and the proposed rule.

The Council prepared an FEIS for Amendment 1; the FEIS describes the impacts of the proposed Amendment 1 measures on the environment. Since most of the measures determine whether or not fishermen can continue to fish for tilefish, and at what level in the future, the majority of the impacts are social and economic. Although the impacts may be negative in the short term for fishermen who do not qualify for an IFQ Allocation, the long-term benefits to the Nation of a tilefish fishery without over-capitalization and derby-style fishing are positive.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(A) to waive prior notice and opportunity for public comment for the revisions to 15 CFR 902.1(b) because this portion of this final rule specifies actions of agency organization, procedure, or practice. Revisions to 15 CFR 902.1(b) in this action are necessary to maintain an accurate inventory of valid OMB control numbers for NOAA actions. The public has already been provided opportunity to comment on these information collections through the publication of the proposed rule for Amendment 1. Further, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delayed effectiveness for revisions to 15 CFR 902.1(b) in this final rule because these revisions are necessary for the purposes of agency procedure and practice to comply with the requirements of the PRA, and are necessary to allow for the collections required under § 648.291 of this final rule. These non-substantive revisions are necessary to ensure that the public is informed of the accurate OMB control number associated with particular regulatory citations. These revisions do not affect vessel operations.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for §§ 648.290 and 648.291 of this rule. These sections give NMFS the authority to qualify individuals for IFQ allocations, issue IFQ Allocation permits, and process IFQ Allocation

Transfer Forms. A delay in the effective date of these sections of this final rule would cause a disruption in the ordinary commerce of the tilefish fishery, and would be contrary to the public interest. IFQ Allocation permit holders will receive a portion of the overall annual quota for the species. Fishing for tilefish under the IFQ program begins on November 1, 2009, to coincide with the start of the 2010 fishing year. IFQ allocations are often transferred, either permanently or temporarily, to meet changing economic circumstances in an IFQ fishery prior to the beginning of the fishing year so that they are effective on the first day of the fishing year. Without the portions of this rule that allow NMFS to qualify applicants, issue IFQ Allocation permits, and process IFQ Allocation Transfer Forms in effect, NMFS could not ensure that the IFQ Allocation permits would be issued to the qualified individuals by the beginning of the fishing year; or make a transfer of part or the entirety of an allocation, either permanently or temporarily, that would be effective on the beginning of the fishing year. This inability on the part of NMFS to issue such permits and process such IFQ allocation transfers would preclude the intended recipients of such permits or transfers from fishing, thereby engendering a negative economic impact on the tilefish fishery. A delay in the effectiveness of these portions of the rule would be contrary to the rule's intent to shift the tilefish fishery from a limited access quota-monitored fishery, to an IFQ fishery that is efficient, reduces capacity in the fishing fleet, reduces the incentive for derby-style fishing, and allows the fishermen more flexibility in their operations so as to minimize the negative impacts of fishing in adverse weather. Allowing these sections of the rule to be effective upon publication would have the support of a majority of the qualified IFQ Allocation permit holders and would facilitate the permitting and transfer of IFQ. The publication of the proposed rule was delayed because the original submission of the Amendment 1 document to NMFS from the Council needed revisions to allow NMFS to consider it complete. Every effort was made to publish this final rule as expeditiously as possible.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0590. Public reporting burden for this collection is estimated to average as follows:

1. Initial application for an IFQ Allocation permit—30 min per response;

2. Renewal application for an IFQ Allocation permit—15 min per response;

3. Appeal of an initial IFQ Allocation permit denial—2 hr per response;

4. Completion of an IFQ allocation interest declaration form—5 min per response;

5. Application for an IFQ transfer (permanent or temporary)—5 min per response;

6. Electronic payment of cost-recovery fees—2 hr per response;

7. Additional IFQ reporting requirements—2 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Pursuant to 5 U.S.C. 603, NMFS prepared a FRFA, which describes the economic impact that this final rule, along with other non-preferred alternatives, would have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Amendment 1, the comments and responses in this final rule, and the corresponding economic analyses prepared for Amendment 1 (*e.g.,* the FEIS and the RIR). The contents of these documents are not repeated in detail here. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

Statement of Need for This Action

The purpose of this action is to improve the management of the tilefish fishery by the implementation of an IFQ program in the Tilefish FMP.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

Sixteen comment letters were received during the comment periods on the FMP and proposed rule. The majority of comments were not specifically directed to the IRFA, but most were related to economic impacts on small entities. The comments and responses are contained in the Comments and Responses section of the preamble of this final rule and are not repeated here. Comments 2, 4, 7, 8, 10, 11, 12, 13, 14, and 15 were specifically directed at the economic consequences of Amendment 1 and, particularly, at the IFQ program and its potential impacts on individual vessels, all of which are small entities.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

When the original Tilefish FMP was implemented, the tilefish quota was divided among three limited access fishing categories under a limited access program. A total of 31 vessels (Full-time, Part-time, and CPH) are currently permitted to participate in the limited access tilefish fishery. In addition, approximately 2,400 vessels currently hold an open access tilefish Incidental category permit. The approved measures will mostly affect the 31 vessels that are permitted to participate in the fishery under the current limited access system. The approved measures only apply to the Full-time and Part-time tilefish vessels. Vessels with an Incidental tilefish permit would continue to operate with a tilefish open access permit that would allow the landing of an incidental catch of tilefish, *i.e.,* 300 lb (136 kg). In addition, according to NMFS VTR data, 32 vessels have landed tilefish from 1996 through 2005. The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing industry, as a firm with receipts (gross revenues) of up to $4.0 and $6.5 million, respectively. All persons or entities that own permitted vessels fall within the definition of small business.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action contains several new collection-of-information, reporting, and recordkeeping requirements. The following describes these requirements.

1. Initial IFQ Allocation Permit

Because 32 vessels have landed tilefish during the period described above, NMFS estimates that there would be, at most, 32 applicants for an IFQ Allocation permit. Each IFQ Allocation permit application will take approximately 30 min to process. Consequently, the total time burden for the initial applications will be approximately 16 hr (32 × 30 min/60 min = 16). According to the analysis for Amendment 1, only 13 IFQ applicants are expected to qualify and consequently renew their applications each year. IFQ Allocation permit renewal is estimated to take 15 min per application on average, for a total burden of approximately 3.25 hr per year (13 × 15 min/60 min = 3.25). Thus, the 3-year average total public time burden for IFQ Allocation permit applications and permit renewals would be approximately 7.33 hr ((15.5 + 3.25 + 3.25)/3 = 7.33). Up to 32 applicants could potentially appeal their IFQ Allocation permit application decisions over the course of the application period. The appeals process is estimated to take 2 hr per appeal to complete, on average, for a total burden of 64 hr. The burden of this one-time appeal, annualized over 3 years, would be 21.33 hr.

2. Permanent and Temporary Transferability of IFQ

Using the NMFS Northeast Region Atlantic Surfclam and Ocean Quahog (SC/OQ) ITQ Transfer Program (OMB Control No. 0648–0240) as a proxy for the response rate for the tilefish IFQ quota transfer program, it is anticipated that there will be approximately 65 quota transfers (permanent and temporary) annually in the tilefish IFQ program. It is reasonable that it would take the same amount of time to complete a tilefish IFQ transfer application as it does to complete a SC/OQ transfer application. Therefore, using SC/OQ as a proxy, it is estimated that each transfer application will take approximately 5 min to complete. As noted above, the Council estimates that 13 entities will qualify for an initial tilefish IFQ Allocation. If these 13 IFQ Allocation permit holders completed 5 transfers annually, at 5 min per form, the annual burden would be approximately 5 hr.

3. IFQ Allocation Acquisition

To administer the 49-percent limit on IFQ allocation acquisition, tilefish IFQ Allocation permit holders will be required to submit an IFQ allocation interest declaration form annually, at the time that they submit their IFQ Allocation permit renewal applications. If there are approximately 13 initial tilefish IFQ Allocation permits issued, there will be approximately 13 interest declaration forms each in the second and third years. However, due to IFQ allocation transfer, it is possible that there could be a different number of IFQ allocations after the initial year. It is estimated that it would take 5 min to complete each IFQ allocation interest declaration form; therefore, the annual reporting burden would be 1 hr (13 × 5 min/60 min), or 1 hr, averaged over the first 3 years.

4. Cost-Recovery Fee Collection

As NMFS is initiating cost-recovery for this program, there are no current data for use in estimating the burden associated with submitting a cost-recovery payment. Using the burden per response used by the NMFS Alaska Region's Individual Fishing Quota Cost-Recovery Program (OMB Control No. 0648–0398) as a proxy for the tilefish IFQ program, it is estimated that it would take 2 hr per response. Each tilefish IFQ Allocation permit holder will be required to submit a cost-recovery payment once annually. Assuming that there are 13 tilefish IFQ Allocation permit holders, the burden hour estimate is 26 hr (13 × 2).

5. IFQ Reporting Requirements

Tilefish vessels will be required to input their pre-printed VTR serial number and dealer number into the IVR system within 48 hr of landing. Using the burden per response used by the current Northeast Family of Forms (OMB Control No. 0648–0202) as a proxy for the tilefish IFQ program, it is estimated that it will take 2 min for each IVR response. Landings data collected from vessels within the Full-time Tier-1 category for the previous 3 years indicate that they land, on average, 19 times a year. The current Full-time Tier 1 category is thought to most closely resemble the future IFQ program, as vessels currently have a cooperative system in place to evenly distribute landings throughout the year. As stated earlier, the Council estimates that 13 entities will qualify for an initial tilefish IFQ Allocation. The 13 vessels associated with these initial allocations will each call into the IVR system approximately 19 times a year. Amendment 1 requires two new IVR reporting requirements (dealer number and pre-printed VTR serial number). Each call to the IVR system will now include an additional two responses, each requiring 2 min of response time. This additional burden would be approximately 16 hr (13 × 19 × 4/60 min).

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The following discussion also includes a description of the economic impacts of the proposed action compared to significant non-selected alternatives as required under the RFA for inclusion in the FRFA. In addition, descriptions of the economic analysis for several of the selected and non-selected alternatives contained in the IRFA were not included in the FRFA, as NMFS determined that they are not significant under the RFA, and should not have been included in the IRFA. These alternatives include the Commercial Trip Limit, IFQ Program Review Process, Reporting Requirements, Recreational Bag-Size Limits, Framework Adjustment Process, Monitoring of Tilefish Landings, EFH Designations, and the HAPC designation measures.

Based on preliminary unpublished NMFS dealer data from Maine to Virginia, the 2005 total commercial value for tilefish was estimated at $3.3 million from Maine through Virginia. In summary, assuming 2005 ex-vessel prices, the overall reduction in gross revenue in all Federally managed fisheries, under the approved measures, would be approximately $100,000. This includes:

- An increase in tilefish ex-vessel revenue by approximately $253,000, as landings will likely be spread throughout the year, thus supporting a higher price per pound, and there will likely be a reduction in derby-style fishing.
- The implementation of cost-recovery will decrease vessel gross revenues by approximately $141,066, assuming a TAL of 1.995 million lb (0.905 million kg), 2005 tilefish ex-vessel value, and an initial default cost-recovery fee of 3 percent of ex-vessel value.
- The potential reduction in ex-vessel revenue, for all fisheries, associated with the implementation of GRAs may be approximately $210,000.

The initial default fee and cost-recovery rate of 3 percent may change

in subsequent years if the fee and cost-recovery is lower than initially assessed. Therefore, potential changes in revenue associated with the cost-recovery program may be lower than estimated here. The table included in the Measures to Reduce Gear Impacts in EFH section of the preamble to this final rule shows the economic impact to the fisheries as a result of the implementation of the Veatch and Oceanographer Canyon GRAs. However, as indicated in the analysis of the GRA alternatives, it is expected that localized reductions in revenues due to the proposed GRAs are likely to be partially or completely recouped due to an increase in effort outside of the GRAs. Effort displacement could, however, increase operating costs for fishermen who are forced to fish in other areas. As such, the lost revenue estimates represent a worst-case prediction of the anticipated loss in ex-vessel revenues that would result from closing this area to bottom-tending mobile gear. There was no bottom-tending mobile gear activity reported within the Norfolk and Lydonia GRAs in 2005. Finally, the proposed IFQ program also has associated costs to fishermen from the processing of payment fees, sale of IFQ allocations, and lease of IFQ allocations. These additional costs are estimated to be approximately $1,270 total for fishermen during the first year of the IFQ program. These costs are expected to be reduced, thereafter, to approximately $600 per IFQ Allocation permit.

Measures Affecting Fishery Program Administration

1. IFQ System

A detailed description of each IFQ Allocation alternative is presented in section 5.1 of Amendment 1, and the analysis of impacts is presented in section 7.1. The original FMP implemented a limited entry program and a tiered commercial quota allocation of the TAL. However, the original FMP does not address how the quota is to be distributed among vessels within each of the three limited access fishing categories. Currently, the tilefish fishery is overcapitalized. While there are fewer boats participating in the fishery today, there are still more boats in the fishery than required to efficiently harvest the TAL. Furthermore, derby-style fishing conditions in the Part-time and Full-time Tier 2 categories have forced early closures in recent years. The approved IFQ program should eliminate the derby-style fishing that exists under the current management system. Under the approved IFQ program, fishermen can decide when to harvest, taking into consideration weather conditions and price at the dock, without losing fishing opportunity when the quota is reached.

The IFQ Allocation management measures within Amendment 1 analyze a wide variety of different systems. The evaluated IFQ programs could have implemented quota allocations for any combination of the limited access categories. As is currently the case, the Full-time Tier 1 category would initially receive 66 percent of the initial adjusted TAL, the Full-time Tier 2 category vessels would receive 15 percent, and the Part-time category would receive 19 percent. However, each IFQ alternative proposed under Amendment 1 would allocate specific quota allocations to vessels within the three permit categories based on historical landings from one of three proposed sets of time periods (average landings for 1988–1998, average landings for 2001–2005, or best 5 years from 1997 to 2005) or by dividing the overall quota for each permit category equally among all permitted vessels in each category.

As previously indicated, all of the IFQ Allocation alternatives considered under Amendment 1 would have the potential to reduce fishing capacity, as it is expected that these alternatives would all allow fishermen to improve overall fishing methods by providing more flexibility in deciding when, where, and how to fish. The reduction in fishing capacity could potentially be the highest under the IFQ programs evaluated that include the largest number of permit holders (*e.g.,* Alternatives 5.1.D and 5.1.E within Amendment 1). Furthermore, alternatives that allocate the initial IFQ in a manner that rewards more recent fishing participation would also further reduce excess fishing capacity and latent fishing effort. In addition, smaller operators, with limited quota allocations, but with other fishing opportunities and earnings, may quickly exit the fishery. Operators with larger quota allocations, more experience, and/or significantly less fishing opportunities and earnings in other fisheries (or sectors of the economy) may take longer, or not exit the fishery at all. These marginal operations are expected to continue to fish for tilefish under an IFQ program, as long as they can cover their variable costs. By improving catch efficiency under an IFQ program, operating costs could be lowered, as fishermen have more flexibility in their input choices and trip planning. This in turn is expected to promote safer at-sea operating conditions.

The Council adopted management measures to implement an IFQ program in all three of the current limited access permit categories. Under Amendment 1, IFQ Allocation for qualifying Full-time vessels will be distributed using average landings for the 2001–2005 period. For Part-time vessels, an equal allocation will be used to calculate IFQ for vessels that landed tilefish during the 2001–2005 period. The specific IFQ Allocations associated with all of the evaluated alternatives are fully described in section 7.1 of Amendment 1. It is expected that landings for Full-time vessels will not change under an IFQ program when compared to the landings generated by these vessels under the current limited access system in 2005 (base year). The approved IFQ program is not expected to change the overall amount of tilefish landed, since this fishery is already operating under a hard TAL system, and the TAL is being fully harvested. The IFQ program will only divide and assign the current TAL (as reduced by research set-asides, incidental catch, and prior year overages) to individual fishermen. Overall tilefish prices are not expected to change significantly, and the overall landings are likely to remain constant under the current rebuilding scheme. However, it is likely that Part-time vessels qualifying for IFQ Allocations may spread their landings throughout the year (to avoid the current derby-style fishing practices) and, therefore, they are more likely to receive higher prices for their product. Assuming the current TAL allocated to the Part-time vessels, and the 2005 tilefish price differential between Full-time and Part-time vessels, it is expected that Part-time vessels may generate revenue increases, from spreading landings throughout the year and not engaging in a derby-style fishery, of approximately $253,000. An increase in tilefish prices could decrease consumer surplus. If there is a change in the price of tilefish there would be associated changes in producer surplus (PS). The magnitude of the PS change will be associated with the price elasticity of demand for this species. The law of demand states that the price and quantity demanded are inversely related. The elasticity of demand is a measure of the responsiveness of the quantity that will be purchased by consumers, given changes in the price of that commodity (while holding other variables constant). Seafood demand, in general, appears to be elastic. For example, an increase in the ex-vessel price of tilefish may increase PS. A decrease in the ex-vessel price of tilefish may also increase PS if

we assume that the demand for tilefish is moderately to highly elastic. The exact shape of the market demand curve for tilefish is not known; therefore, the magnitude of these changes cannot be fully assessed. In addition, the proposed tilefish IFQ program may also affect the ability of fishermen to negotiate better prices for their product.

Under the non-selected status quo alternative, the commercial tilefish fleet would likely continue to be characterized by higher than necessary levels of capital investment and increased operating costs. In addition, shortened seasons and limited at-sea safety, price fluctuations, and depressed ex-vessel price, would continue. The implementation of an IFQ program will likely decrease overcapitalization, distribute fishing effort throughout the year, decrease operating costs by allowing fishermen to better manage their operations, and potentially increase ex-vessel prices. The approved measures are not expected to change enforcement costs drastically. However, it is possible that these costs could decrease.

2. Permanent Transferability of Ownership

The Council considered five alternatives that would define transferability of ownership. Restrictions on who may purchase quota allocations, after an initial IFQ allocation has been established, are frequently a major consideration when developing IFQ programs. Transfer restrictions are generally used to address concerns that implementation of an IFQ program will result in drastic and rapid changes to the status quo. In the short-run, transferability results in lower operating costs and higher production value in fisheries that have large harvesting capacity. Fishermen that can operate at the lowest cost, or produce the most valuable product, are able to buy or lease fishing quotas from marginal operators at a price that is satisfactory to both parties. In the long-run, transferability of quota is anticipated to optimize the size of the tilefish fishing fleet as an allocation holder will have no economic incentive to invest in a level of capital larger than needed to land their quota allocation. The free transfer of quota allocation, implemented under the IFQ program, will likely change the existing fishery rapidly and/or substantially. In addition, it is possible that IFQ could be sold to entities that are willing to pay the highest price. It is likely that these entities would operate at the lowest cost, produce the most valuable product, and in general terms, be the most efficient.

The no action alternative would have prohibited the transfer of IFQ allocations. Thus, the no action alternative would not have benefited those individuals that wanted to sell their allocations or buy allocations to enter the fishery or expand fishing operations. The Amendment 1 approved measure for quota allocation transfer allows for free quota allocation transfers, with limited restrictions, and will enhance the market for IFQ allocations to a greater extent than any other evaluated alternative. The other non-selected alternatives would all restrict the transfer of IFQ in some fashion, at a level between the no-action and the preferred alternative. It is likely that increased demand for a commodity that has a fixed supply would tend to increase the selling price.

3. Temporary Transferability of Ownership

As indicated in section 7.3 of Amendment 1, some degree of temporary transfer (leasing) flexibility may be important to allow fisheries to adapt to change. For instance, leasing would allow fishermen without a quota allocation, or a small initial quota, to lease quota allocation in order to participate in the fishery, and fine-tune their operations before they make a commitment to purchase IFQ allocations. The supply and demand factors that affect the price of IFQ allocations, and the benefits to fishing operations that are derived from the various levels of transferability systems discussed under the previous alternative, also apply here. As occurs with the permanent transfer of ownership, the difference in leasing price for the alternatives evaluated cannot be estimated with the existing information. It is possible that a lease would move quota allocations to individuals that are willing to pay the highest price. It is likely that these individuals would operate at the lowest cost, produce the most valuable product, and in general terms be the most efficient operators. However, the overall harvest cost may increase for these individuals as a consequence of leasing IFQ Allocations. IFQ Allocation permit holders can also benefit from leasing, as they can modify their operations to deal with market fluctuations, lease their allocations in the event of some type of physical or mechanical hardship, or lease to generate revenue.

4. IFQ Allocation Acquisition

IFQ consolidation may lead to positive economic development and may be considered a rational outcome of a LAPP. However, consolidation may result in only a few participants enjoying the benefits of the public tilefish resource. As the price of allocations rise, smaller operators may not be able to afford to buy into the fishery. Therefore, smaller operators may lease allocations and the fishery may become comprised of absentee owners. Alternative 4A would not have restricted allocation consolidation. This could have potentially led to increased economic efficiency, as vessel owners could attempt to maximize profit by improving vessel efficiency and benefit from the opportunity to reduce production costs (economic efficiency grounds; exploitation of economies of scale). Other alternatives would have limited the amount of consolidation in the fishery, which may not have allowed for the most efficient vessel operations, and/or impact the initial quota allocation. An excessive allocation limit can only be defined in the context of a well defined problem, which is related to the amount of quota allocation owned or controlled by a single entity, or by the number of operating entities. The excessive allocation limit is defined as the limit that prevents the problem from occurring, or keeps it at an acceptable level. One of these problems is the potential control of market power in the tilefish fishery. The Amendment 1 adopted measure sets an individual allocation accumulation limit at 49 percent of the TAL (adjusted). In selecting this alternative, the Council considered the potential market power impact that an individual entity could have when accumulating tilefish IFQ allocations, and considered the historical fishing practices in the fishery. Due to the large number of substitutes for tilefish that are available in the marketplace, the Council does not expect that any level of IFQ ownership in the tilefish fishery would allow a single harvester to control the market price for tilefish. The Council also considered historical landings and participation when setting the allocation cap at 49 percent. Prior to the implementation of the original FMP, one vessel landed approximately 36 and 37 percent of the overall tilefish landings during the 1989 and 1990 years, respectively. Therefore, a 49-percent IFQ allocation acquisition limit provides tilefish vessels with an opportunity to accumulate allocations modestly above what some specific

vessels have landed in recent history in order to potentially allow for the most efficient operations to harvest the quota. Furthermore, the Council was concerned that, if the overall TAL is reduced in the future, then Full-time Tier 1 and Tier 2 vessels may not be able to fish at efficient levels and may require the buying or leasing of additional allocations from other vessels in order to continue to participate in the fishery. The vessels that originally qualified for the Full-time permit categories had more than enough capacity to harvest the current quota level. In fact, in 1997, three Full-time vessels landed between 706,000 lb (320,236 kg) and 811,000 lb (367,863 kg) of tilefish.

5. Fees and Cost-Recovery

As previously indicated, NMFS is required under the Magnuson-Stevens Act to collect fees to recover the costs directly related to the management, enforcement, and data collection and analysis of IFQ programs. Under section 304(d)(2) of the Magnuson-Stevens Act, the Secretary is authorized to collect a fee to recover these costs. The fee shall not exceed 3 percent of the ex-vessel value of the fish harvested. A fee and cost-recovery program for the tilefish fishery is implemented under the adopted measures. The main difference between the adopted measure and the other non-selected action alternative is the manner in which payments are collected and made. Under the adopted measure, the IFQ Allocation permit holder is responsible for self-collecting his or her own fee liability for all of his/her IFQ tilefish landings for later submission to NMFS. Under the non-selected alternative, Federally permitted dealers would be required to collect a fee, for later submission to NMFS, when they purchase tilefish. Each of these alternatives proposed to implement a 3-percent fee of the actual ex-vessel value of tilefish landed under the IFQ program. The fee can be adjusted downward by NMFS in the event the recovered fees exceed the costs directly related to the management, enforcement, and data collection and analysis of the LAPP components of the tilefish fishery. The approved measures will implement an IFQ program for all permit categories. Using a TAL of 1.995 million lb (904,917 kg) of tilefish, and applying a 2005 coast-wide average ex-vessel price for all market categories of $2.48 per pound at the maximum fee level of 3 percent, the total fee expected to be collected in the first year of the program is $141,066. Applying these assumptions regarding quota and price at a 2-percent fee level, the total fee expected to be collected would be $94,044. Producer surplus is reduced by the amount of the fee plus any other costs associated with paying the fee. Those costs include time and materials required for completing the paperwork and paying the fee. Preliminary analyses show that the management, enforcement, and data collection and analysis cost would be approximately $94,000, which is less than the 3-percent maximum fee.

Recreational Charter/Party Vessel Permits and Reporting Requirements

The no action alternative would not have implemented permit and reporting requirements for Charter/Party permitted vessels and operators. The adopted measures require that Charter/Party vessels fishing for tilefish obtain a Federal open access Charter/Party permit, and require that any vessel fishing under a Charter/Party permit have on board at least one person who holds an operator permit. According to NMFS VTR data, 32 vessels landed tilefish between 1996 and 2005. It is expected that all of these vessels will apply for a Charter/Party permit in order to maintain flexibility in their operations. The implementation of this measure would likely increase the understanding of the recreational participation in the fishery, and would assist managers to better assess fishing trends. This action is purely administrative and is not expected to change current participation of charter/party vessels in the tilefish fishery.

Measures To Reduce Gear Impacts on EFH

Under the adopted measure, the Council decided to close a portion of Norfolk, Veatch, Lydonia, and Oceanographer Canyons to bottom-tending mobile gear to reduce gear impacts on juvenile and adult tilefish EFH. The associated potential changes in ex-vessel revenues associated with each of the evaluated GRAs are discussed in detail in sections 7.18.5 and 7.18.6 of Amendment 1. The status quo alternative is expected to have neutral short-term social and economic impacts, as the current status quo would be maintained. However, there could potentially be longer-term negative socioeconomic impacts if the failure to establish a GRA prevents potential future increases in the productivity and associated fishery yields of managed resources in the region. Alternative 18B would have implemented a closure to protect tilefish habitat between 70°00'W. long. and 39°00'N. lat. on the outer continental shelf/slope from bottom otter trawling. This area was considered for closure because of the extensive bottom trawl activity identified in the overlap analysis (Appendix E of Amendment 1) in these two statistical areas. This alternative would have had significant short-term negative socioeconomic impacts based on an examination of 2005 VTR data within the proposed closure area. It should be noted that, because the data are self-reported, there could be errors in the spatial information or reported data resulting from inaccurate reporting, unclear handwriting, or errors in transcribing the written information. Potential losses in ex-vessel revenue could be as high as $18.3 million (when compared to 2005 fishing opportunities) if this alternative was selected, and the EFH designation was not changed. Economic losses associated with this non-selected alternative could have been slightly lower under the adopted EFH measures. Under the approved measures, the combined potential changes in ex-vessel revenues associated with the implementation of GRAs in Veatch and Oceanographer Canyons, for all fisheries, is expected to be approximately $210,000 (*see* table below). There was no bottom trawl activity reported within the Norfolk and Lydonia GRAs in 2005.

	VEATCH CANYON GRA	OCEANOGRAPHER CANYON GRA
NUMBER OF TRIPS	9	5
SPECIES	VALUE ($)	VALUE ($)
MONKFISH	1,198	3,929
BLUEFISH	0	0
BUTTERFISH	4,059	2,293

	VEATCH CANYON GRA	OCEANOG-RAPHER CANYON GRA
ATLANTIC CROAKER		
COD	0	1,055
BLUEBACK HERRING		
CONGER EEL		
UNKOWN EEL		
WINTER FLOUNDER	0	2,656
SUMMER FLOUNDER	4,798	4,072
WITCH FLOUNDER	0	1,357
YELLOWTAIL FLOUNDER	0	6,031
AMERICAN PLAICE	0	741
FOURSPOT FLOUNDER		
HADDOCK	0	16,946
RED HAKE	439	392
WHITE HAKE	0	0
ATLANTIC HERRING	0	0
JOHN DORY	821	0
KING WHITING	0	0
LUMPFISH	0	0
ATLANTIC MACKEREL	3	355
POLLOCK		
SCUP	0	0
UNKNOWN SEATROUT	0	0
BLACK SEA BASS	347	0
SEA ROBINS		
SQUETEAGUE WEAKFISH	5	0
SPOTTED WEAKFISH		
SPINY DOGFISH		
SKATES (MIX)	0	0
LITTLE SKATE		
BLUELINE TILEFISH	0	0
GOLDEN TILEFISH	1,287	0
BLACK WHITING	0	0
SILVER HAKE	1,476	42,620
LOBSTER	0	0
SEA SCALLOP	0	766
LOLIGO SQUID	109,294	154
ILLEX SQUID	0	0
UNKNOWN SQUID	0	0
2005 TOTAL	$123,728	$83,368

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''the small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, *i.e.,* permit holder letter, will be sent to all holders of permits for the tilefish fishery. The guide and this final rule will be available upon request.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 17, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR part 902, and 50 CFR part 648 are amended as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by:

■ a. Revising the existing entry for § 648.7; and

■ b. Adding new OMB control numbers in numerical order and new entries for § 648.291 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * * * *	
50 CFR.	
* * * * * * *	
648.7	–0018, –0202, –0212, –0229, and –0590.
* * * * * * *	
648.291	–0590.
* * * * * * *	

* * * * *

TITLE 50—WILDLIFE AND FISHERIES

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.2, the definitions for ''Bottom-tending mobile gear,'' ''Lessee,'' and ''Lessor'' are revised, and a definition of ''Interest in an IFQ allocation'' is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Bottom-tending mobile gear, with respect to the NE multispecies and tilefish fisheries, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

* * * * *

Interest in an IFQ allocation means: An allocation permanently or temporarily held by an individual; or by a company in which the individual is an owner, part owner, officer, shareholder, or partner; or by an immediate family member (an individual's parents, spouse, children, and siblings).

* * * * *

Lessee means:

(1) A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) A person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a), who receives temporarily transferred tilefish IFQ Allocation, as specified at § 648.291(e)(1).

* * * * *

Lessor means:

(1) A vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at § 648.82(k); or

(2) An IFQ Allocation permit holder who temporarily transfers tilefish IFQ Allocation, as specified at § 648.291(e)(1).

* * * * *

■ 5. In § 648.4, paragraph (a)(12) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(12) *Tilefish vessels.* Any vessel of the United States must have been issued, under this part, and carry on board, a valid vessel permit to fish for, possess, or land tilefish, in or from the Tilefish Management Unit, and must fish under the authorization of a tilefish IFQ Allocation permit, issued pursuant to § 648.291, to possess, or land tilefish in excess of the trip limit as specified under § 648.293.

(i) *Party and charter vessel permits.* Any party or charter vessel must have been issued, under this part, a Federal Charter/Party vessel permit to fish for tilefish in the Tilefish Management Unit, if it carries passengers for hire. Recreational fisherman fishing onboard such a vessel must observe the recreational possession limits as specified at § 648.295 and the prohibition on sale.

(ii) [Reserved]

* * * * *

■ 6. In § 648.7, paragraph (b)(2)(ii) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel fishing under a tilefish IFQ Allocation permit, issued under this part, as described in § 648.291(a), must submit a tilefish catch report by using the IVR system within 48 hr after returning to port and offloading. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which tilefish are caught, pounds landed, VTR pre-printed serial number, and the Federal dealer number for the dealer who purchases the tilefish. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

■ 7. In § 648.14, paragraph (u) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) *Golden tilefish.* It is unlawful for any person owning or operating a vessel to do any of the following:

(1) *Permit requirements*—(i) *Operator permit.* Operate, or act as an operator of, a vessel with a tilefish permit, or a vessel fishing for or possessing tilefish in or from the Tilefish Management Unit, unless the operator has been issued, and is in possession of, a valid operator permit.

(ii) *Dealer permit.* Purchase, possess, receive for a commercial purpose; or attempt to purchase, possess, or receive for a commercial purpose; as a dealer, or in the capacity of a dealer, tilefish that were harvested in or from the Tilefish Management Unit, without having been issued, and in possession of, a valid tilefish dealer permit.

(iii) *Vessel permit.* Sell, barter, trade, or otherwise transfer from a vessel; or attempt to sell, barter, trade, or otherwise transfer from a vessel; for a commercial purpose, other than solely for transport on land, any tilefish, unless the vessel has been issued a tilefish permit, or unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(2) *Possession and landing.* (i) Fish for, possess, retain, or land tilefish, unless:

(A) The tilefish are being fished for or were harvested in or from the Tilefish Management Unit by a vessel holding a valid tilefish permit under this part, and the operator on board such vessel has been issued an operator permit that is on board the vessel.

(B) The tilefish were harvested by a vessel that has not been issued a tilefish permit and that was fishing exclusively in State waters.

(C) The tilefish were harvested in or from the Tilefish Management Unit by a vessel, other than a Party/Charter vessel, that is engaged in recreational fishing.

(ii) Land or possess tilefish harvested in or from the Tilefish Management Unit, in excess of the trip limit pursuant to § 648.293, without a valid tilefish IFQ Allocation permit, as specified in § 648.291(a).

(iii) Land tilefish harvested in or from the Tilefish Management Unit in excess of that authorized under a tilefish IFQ Allocation permit as described at § 648.291(a).

(iv) Operate a vessel that takes recreational fishermen for hire to fish for tilefish in the Tilefish Management Unit without a valid tilefish Charter/Party permit, as required in § 648.4(a)(12)(i).

(v) Fish for tilefish inside and outside of the Tilefish Management Unit on the same trip.

(vi) Discard tilefish harvested in or from the Tilefish Management Unit, as defined in § 648.2, unless participating in recreational fishing, as defined in § 648.2, or while fishing subject to a trip limit pursuant to § 648.291(d)(3) or § 648.293.

(3) *Transfer and purchase.* (i) Purchase, possess, or receive for a commercial purpose, other than solely for transport on land; or attempt to purchase, possess, or receive for a commercial purpose, other than solely for transport on land; tilefish caught by a vessel without a tilefish permit, unless the tilefish were harvested by a vessel without a tilefish permit that fished exclusively in State waters.

(ii) Purchase or otherwise receive for commercial purposes tilefish caught in the EEZ from outside the Tilefish Management Unit unless otherwise permitted under 50 CFR part 622.

(4) *Presumption.* For purposes of this part, the following presumption applies: All tilefish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Tilefish Management Unit, unless the preponderance of all submitted evidence demonstrates that such tilefish were harvested by a vessel fishing exclusively in State waters.

* * * * *

■ 8. In § 648.290, the section heading, and paragraphs (b) and (c) are revised to read as follows:

§ 648.290 Individual fishing quota program and other restrictions.

* * * * *

(b) *TAL allocation.* For each fishing year, up to 3 percent of the TAL may be set aside for the purpose of funding research. Once a research amount, if any, is set aside, the TAL will first be reduced by 5 percent to adjust for the incidental catch. The remaining TAL will, for the first year of the Individual Fishing Quota Program (IFQ TAL), be reduced by the 15-percent reserve, as specified in § 648.291(d)(4), and then allocated as follows: Full-time tier Category 1, 66 percent; Full-time tier Category 2, 15 percent; Part-time, 19 percent, to allow for the calculation of IFQ allocations and the issuance of IFQ Allocation permits pursuant to § 648.291.

(c) *Adjustments to the quota.* If the incidental harvest exceeds 5 percent of the TAL for a given fishing year, the incidental trip limit of 300 lb (138 kg) may be reduced in the following fishing year. In the first year of the IFQ program only, any overages from the prior limited access category fishery will be deducted from the appropriate category, prior to the initial distribution of IFQ allocation as specified at § 648.291(c). If an adjustment is required, a notification of adjustment of the quota will be published in the **Federal Register**.

* * * * *

■ 9. Section 648.291 is revised to read as follows:

§ 648.291 Individual fishing quota.

(a) *Individual fishing quota (IFQ) allocation permits.* After adjustments for incidental catch, research set asides, and overages, as appropriate, during the first year of the IFQ Program, the Regional Administrator shall divide the Category quotas specified pursuant to § 648.290(b), among the owners of vessels that meet the qualification criteria specified in paragraphs (a)(1)(i) and (ii) of this section. Initial allocations shall be made in accordance with paragraph (b)(1)(i) of this section, in the form of an IFQ Allocation permit issued to a qualifying vessel owner, who files a complete application, specifying the allocation percentage of the IFQ TAL that the owner is entitled to harvest. This allocation percentage shall be calculated pursuant to paragraph (c) of this section and converted annually into pounds of tilefish. Amounts of IFQ of 0.5 lb (0.23 kg) or smaller created by this allocation shall be rounded downward to the nearest whole number, and amounts of IFQ greater than 0.5 lb (0.23 kg) created by this division shall be rounded upward to the nearest whole number, so that IFQ allocations are specified in whole pounds. Allocations in subsequent years shall be made by applying the allocation percentages that exist on September 1 of a given fishing year to the IFQ TAL pursuant to § 648.290(b), subject to any deductions for overages pursuant to paragraph (f) of this section. These allocations shall be issued in the form of an annual IFQ Allocation permit.

(1) *Qualifying criteria.* (i) A person or entity qualifies for an IFQ Allocation permit if they: Own a vessel with a fishing history that includes a valid tilefish limited access permit for the 2005 permit year and reported landings of tilefish from 2001 through 2005 that constituted at least 0.5 percent of the total landings in the tilefish Category for which it was permitted; or

(ii) Hold a valid confirmation of permit history (CPH) that meets the criteria in paragraph (a)(1)(i) of this section.

(2) [Reserved]

(b) *Application*—(1) *General.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from NMFS. The application must be filled out completely and signed by the applicant. Each application must include a declaration of all interests in IFQ allocations, as defined in § 648.2, listed by IFQ Allocation permit number, and must list all Federal vessel permit numbers for all vessels that an applicant owns or leases that would be authorized to possess tilefish pursuant to the IFQ Allocation permit. The Regional Administrator will notify the applicant of any deficiency in the application.

(i) *Initial application.* An applicant shall submit an application for an initial IFQ Allocation permit no later than 6 months after the effective date of this regulation.

(ii) *Renewal applications.* Applications to renew an IFQ Allocation permit must be received by September 15 to be processed in time for the start of the November 1 fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ Allocation permit holder must renew his/her IFQ Allocation permit on an annual basis by submitting an

application for such permit prior to the end of the fishing year for which the permit is required.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by September 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ Allocation permits on or before October 31 to those who hold permanent allocation as of September 1 of the current fishing year. During the period between September 1 and October 31, transfer of IFQ is not permitted, as described in paragraph (e)(4) of this section. The IFQ Allocation permit shall specify the allocation percentage of the IFQ TAL which the IFQ permit holder is authorized to harvest.

(3) *Duration.* An annual IFQ Allocation permit is valid until October 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904, or revised due to a transfer of all or part of the allocation percentage under paragraph (e) of this section. All Federal vessel permit numbers that are listed on the IFQ Allocation permit are authorized to possess tilefish pursuant to the IFQ Allocation permit until the end of the fishing year or until NMFS receives written notification from the IFQ Allocation permit holder that the vessel is no longer authorized to possess tilefish pursuant to the subject permit. An IFQ Allocation permit holder that wishes to authorize an additional vessel(s) to possess tilefish pursuant to the IFQ Allocation permit must send written notification to NMFS that includes the vessel permit number, and the dates on which the IFQ Allocation permit holder desires the vessel to be authorized to land IFQ tilefish pursuant to the IFQ Allocation permit to be effective.

(4) *Alteration.* An annual IFQ Allocation permit that is altered, erased, or mutilated is invalid.

(5) *Replacement.* The Regional Administrator may issue a replacement permit upon written application of the annual IFQ Allocation permit holder.

(6) *Transfer.* The annual IFQ Allocation permit is valid only for the person to whom it is issued. All or part of the allocation specified in the IFQ Allocation permit may be transferred in accordance with paragraph (e) of this section.

(7) *Abandonment or voluntary relinquishment.* Any IFQ Allocation permit that is voluntarily relinquished to the Regional Administrator, or deemed to have been voluntarily relinquished for failure to pay a recoverable cost fee, in accordance with the requirements specified in paragraph (h)(2) of this section, or for failure to renew in accordance with paragraph (b)(1)(ii) of this section, shall not be reissued or renewed in a subsequent year.

(c) *Initial allocation formulas*—(1) *General.* An individual fishing quota of tilefish shall be calculated as a percentage of the IFQ TAL, based on the following formulas:

(i) *Full-time vessels.* The owner of a vessel that held a Full-time (Category A or B; 66 percent of the adjusted TAL for Category A, and 15 percent of the adjusted TAL for Category B) limited access permit in 2005 shall receive an allocation based on the division of the vessel's average landings from 2001 through 2005 by the total average landings in their respective Category during this same time period to derive a percentage. This percentage shall then be applied to the IFQ TAL to derive an IFQ allocation percentage of the IFQ TAL that shall also be converted to an amount in pounds. If the landings of all qualified vessels yield percentages that are less than the allocation of the entire adjusted quota, the remainder shall be distributed among the qualified vessels based on the ratio of their respective percentages. Vessel landings during this time period will be calculated using NMFS interactive voice reporting (IVR) data for 2002 through 2005, and NMFS dealer data submitted for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the Hadaja v. Evans lawsuit).

(ii) *Part-time vessels.* An owner of a vessel that held a Part-time (Category C) limited access permit in 2005 shall receive an allocation based on the equal division of the Category C quota (19 percent of the adjusted TAL) among vessels that had landings during the 2001 through 2005 time period, to derive an IFQ allocation percentage of the IFQ TAL. This percentage shall also be converted to an amount in pounds. Vessel landings during this time period will be calculated using NMFS IVR data for 2002 through 2005, and NMFS dealer data submitted for 2001 (excluding landings reported from May 15, 2003, through May 31, 2004, as a result of the Hadaja v. Evans lawsuit).

(2) [Reserved]

(d) *Appeal of denial of permit*—(1) *General.* Any applicant denied an IFQ Allocation permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(2) *Appeal review.* The Regional Administrator shall appoint a designee who shall make the initial decision on the appeal. The appellant may appeal the initial decision to the Regional Administrator by submitting a request in writing within 30 days of the notice of the initial decision. If requested, the appeal may be presented at a hearing before a hearing officer appointed by the Regional Administrator. A hearing will only be held if the applicant presents credible documentation with the hearing request to show that the Regional Administrator made an error in determining the ownership of a tilefish limited access permit, the accuracy of amount of landings, or the correct assignment of landings to the permit holder. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative decision of the Department of Commerce. If a hearing is held, the hearing officer shall make findings and a recommendation based upon the administrative record, including that generated during any hearing, pertaining to the application and appeal within NMFS to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendations from the hearing officer, the Regional Administrator shall issue a final decision on the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal.* Any applicant denied an IFQ Allocation permit may request the issuance of a letter of authorization (LOA) from the Regional Administrator to continue to fish for tilefish after the effective date of the final regulations, pending the resolution of the relevant appeal, if his/her vessel was issued a valid tilefish permit in 2008. This LOA would allow a vessel to continue to fish for tilefish. If the appeal is finally denied, the LOA will become invalid 5 days after the receipt of the notice of final denial from the Regional Administrator.

(4) *LOA reserve.* During the first year of the IFQ program, the Regional Administrator will reserve 15 percent of the IFQ TAL, prior to initial distribution of IFQ allocations, to allow for continued fishing under an LOA, as specified in paragraph (d)(3) of this section, pending resolution of the relevant appeal. Any portion of the reserve remaining after the appeals process has been completed will be distributed to IFQ Allocation permit

holders based on their allocation percentages as soon as possible during that fishing year. If vessels fishing under an LOA are projected to land a portion of the IFQ TAL that NMFS determines would unreasonably diminish the allocations of IFQ Allocation permit holders, the Regional Administrator will impose a trip limit to reduce the landings of vessels fishing under an LOA. If vessels fishing under LOAs, pending resolution of the appeals process, are projected to harvest an amount of tilefish in excess of the 15-percent reserve, the allocations for all IFQ Allocation permit holders will be reduced proportionately during that fishing year, to increase the amount of the reserve determined to be necessary. If an IFQ Allocation permit holder has no allocation remaining at the time of the proportionate reduction of all IFQ allocations, this reduction will constitute an overage and will be deducted from the IFQ Allocation permit holder's subsequent fishing year allocation.

(e) *Transferring IFQ allocations*—(1) *Temporary transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, the owner of an IFQ allocation may transfer the entire IFQ allocation, or a portion of the IFQ allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Temporary IFQ allocation transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed, unless the applicant specifically requests that the transfer be processed for the subsequent fishing year. The Regional Administrator has final approval authority for all temporary IFQ allocation transfer requests. The approval of a temporary transfer may be rescinded if the Regional Administrator finds that an emergency has rendered the lessee unable to fish for the transferred IFQ allocation, but only if none of the transferred allocation has been landed.

(2) *Permanent transfers.* Unless otherwise restricted by the provisions in paragraph (e)(3) of this section, an owner of an IFQ allocation may permanently transfer the entire IFQ allocation, or a portion of the IFQ Allocation, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). The Regional Administrator has final approval authority for all permanent IFQ allocation transfer requests.

(3) *IFQ allocation transfer restrictions.* (i) If IFQ allocation is temporarily transferred to any eligible entity, it may not be transferred by the transferee again within the same fishing year, unless the transfer is rescinded due to an emergency, as described in paragraph (e)(1) of this section.

(ii) A transfer of IFQ will not be approved by the Regional Administrator if it would result in an entity owning, or having an interest in, a percentage of IFQ allocation exceeding 49 percent of the total tilefish adjusted TAL.

(iii) If the owner of an IFQ allocation leases additional quota from another IFQ Allocation permit holder, any landings associated with this transferred quota would be deducted from the total yearly landings of the lessee, before his/her base allocation, if any exists, for the purpose of calculating the appropriate cost-recovery fee. As described in paragraph (h) of this section, a tilefish IFQ Allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ Allocation permit, including allocation that he/she leases to another IFQ Allocation permit holder.

(4) *Application for an IFQ allocation transfer.* Any IFQ Allocation permit holder applying for either permanent or temporary transfer of IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Northeast Regional Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for IFQ allocation transfers must be received by September 1 to be processed for the current fishing year.

(i) *Application information requirements.* An application to transfer IFQ allocation must include the following information: The type of transfer (either temporary or permanent), the signature of both parties involved, the price paid for the transfer, indicate eligibility to receive IFQ allocation, the amount of allocation to be transferred, and a declaration, by IFQ Allocation permit number, of all the IFQ allocations that the person or entity receiving the IFQ allocation has an interest in. The person or entity receiving the IFQ allocation must indicate the permit numbers of all Federally permitted vessels that will possess or land their IFQ allocation. Information obtained from the IFQ Allocation Transfer Form is confidential pursuant to 16 U.S.C. 1881a.

(ii) *Approval of IFQ transfer applications.* Unless an application to transfer IFQ is denied according to paragraph (e)(4)(iii) of this section, the Regional Administrator shall issue confirmation of application approval in the form of a new or updated IFQ Allocation permit to the parties involved in the transfer within 30 days of receipt of a completed application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer IFQ allocation for the following reasons: The application is incomplete; the transferor does not possess a valid tilefish IFQ Allocation permit; the transferor's or transferee's vessel or tilefish IFQ Allocation permit has been sanctioned, pursuant to an enforcement proceeding under 15 CFR part 904; the transfer will result in the transferee having a tilefish IFQ Allocation that exceeds 49 percent of the adjusted TAL allocated to IFQ Allocation permit holders; the transfer is to a person or entity that is not eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a); or any other failure to meet the requirements of this subpart. Upon denial of an application to transfer IFQ allocation, the Regional Administrator shall send a letter to the applicant describing the reason(s) for the denial. The decision by the Regional Administrator is the final decision of the Department of Commerce; there is no opportunity for an administrative appeal.

(f) *IFQ allocation overages.* Any IFQ allocation that is exceeded, including amounts of tilefish landed by a lessee in excess of a temporary transfer of IFQ allocation, will be reduced by the amount of the overage in the subsequent fishing year(s). If an IFQ allocation overage is not deducted from the appropriate allocation before the IFQ Allocation permit is issued for the subsequent fishing year, a revised IFQ Allocation permit reflecting the deduction of the overage shall be issued by NMFS. If the allocation can not be reduced in the subsequent fishing year because the full allocation has already been landed or transferred, the IFQ Allocation permit will indicate a reduced allocation for the amount of the overage in the next fishing year.

(g) *IFQ allocation acquisition restriction.* No person or entity may acquire more than 49 percent of the annual adjusted tilefish TAL, specified pursuant to § 648.290, at any point during a fishing year. For purposes of this paragraph, acquisition includes any permanent or temporary transfer of IFQ. The calculation of IFQ allocation for purposes of the restriction on acquisition includes IFQ allocation interests held by: A company in which the IFQ holder is a shareholder, officer,

or partner; an immediate family member; or a company in which the IFQ holder is a part owner or partner.

(h) *IFQ cost-recovery.* A fee shall be determined as described in paragraph (h)(1) of this section, and collected to recover the costs associated with management, data collection and analysis, and enforcement of the IFQ program. A tilefish IFQ Allocation permit holder shall be responsible for paying the fee assessed by NMFS. A tilefish IFQ Allocation permit holder with a permanent allocation shall incur a cost-recovery fee, based on the value of landings of tilefish authorized under his/her tilefish IFQ Allocation permit, including allocation that he/she leases to another IFQ Allocation permit holder. A tilefish IFQ Allocation permit holder, with a permanent allocation, shall be responsible for submitting this payment to NMFS once per year, as specified in paragraph (h)(2) of this section. For the purpose of this section, the cost-recovery billing period is defined as the full calendar year, beginning with the start of the first calendar year following the effective date of the final regulations. NMFS will create an annual IFQ allocation bill for each cost-recovery billing period and provide it to each IFQ Allocation permit holder. The bill will include annual information regarding the amount and value of IFQ allocation landed during the prior cost-recovery billing period, and the associated cost-recovery fees. NMFS will also create a report that will detail the costs incurred by NMFS, for the management, enforcement, and data collection and analysis associated with the IFQ allocation program during the prior cost-recovery billing period.

(1) *NMFS determination of the total annual recoverable costs of the tilefish IFQ program.* The Regional Administrator shall determine the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program. The recoverable costs will be divided by the amount of the total ex-vessel value of all tilefish IFQ landings during the cost-recovery billing period to derive a percentage. IFQ Allocation permit holders will be assessed a fee based on this percentage times the total ex-vessel value of all landings authorized under their permanent IFQ Allocation permit, including landings on allocation that is leased. This fee shall not exceed 3 percent of the total value of tilefish landings of the IFQ Allocation permit holder. If NMFS determines that the costs associated with the management, data collection and analysis, and enforcement of the IFQ allocation program exceed 3 percent of the total value of tilefish landings, only 3 percent are recoverable. Prior to the first year of the IFQ program, NMFS will not have information needed to determine the management, data collection and analysis, and enforcement costs of the program. Therefore, during the initial cost-recovery billing period, the fee shall be set at 3 percent. If the recoverable costs are determined to be less than 3 percent, NFMS shall issue each IFQ Allocation permit holder a fee-overage credit, equal to the amount paid in excess of their portion of the recoverable cost, towards their subsequent year's fee.

(i) *Valuation of IFQ Allocation.* The 3-percent limitation on cost-recovery fees shall be based on the ex-vessel value of landed allocation. The ex-vessel value for each pound of tilefish landed shall be determined from Northeast Federal dealer reports submitted to NMFS, which contain the price per pound at the time of dealer purchase.

(ii) [Reserved]

(2) *Fee payment procedure.* An IFQ Allocation permit holder who has incurred a cost-recovery fee must pay the fee to NMFS within 45 days of the date of the bill. Cost-recovery payments shall be made electronically via the Federal Web portal, *http://www.pay.gov,* or other Internet sites designated by the Regional Administrator. Instructions for electronic payment shall be available on both the payment Web site and the cost-recovery fee bill. Electronic payment options shall include payment via a credit card, as specified in the cost-recovery bill, or via direct automated clearing house (ACH) withdrawal from a designated checking account. Alternatively, payment by check may be authorized by Regional Administrator if he/she determines that electronic payment is not possible.

(3) *Payment compliance.* If the cost-recovery payment, as determined by NMFS, is not made within the time specified in paragraph (h)(2) of this section, the Regional Administrator will deny the renewal of the appropriate IFQ Allocation permit until full payment is received. If, upon preliminary review of a fee payment, the Regional Administrator determines that the IFQ Allocation permit holder has not paid the full amount due, he/she shall notify the IFQ Allocation permit holder in writing of the deficiency. NMFS shall explain the deficiency and provide the IFQ Allocation permit holder 30 days from the date of the notice, either to pay the amount assessed or to provide evidence that the amount paid was correct. If the IFQ Allocation permit holder submits evidence in support of the appropriateness of his/her payment, the Regional Administrator shall determine whether there is a reasonable basis upon which to conclude that the amount of the tendered payment is correct. This determination shall be in set forth in a Final Administrative Determination (FAD) that is signed by the Regional Administrator. A FAD shall be the final decision of the Department of Commerce. If the Regional Administrator determines that the IFQ Allocation permit holder has not paid the appropriate fee, he/she shall require payment within 30 days of the date of the FAD. If a FAD is not issued until after the start of the fishing year, the IFQ Allocation permit holder may be issued a letter of authorization to fish until the FAD is issued, at which point the permit holder shall have 30 days to comply with the terms of the FAD or the tilefish IFQ Allocation permit shall not be issued, and the letter of authorization shall not be valid until such terms are met. Any tilefish landed pursuant to the above authorization will count against the IFQ Allocation permit, if issued. If the Regional Administrator determines that the IFQ Allocation permit holder owes additional fees for the previous cost-recovery billing period, and the renewed IFQ Allocation permit has already been issued, the Regional Administrator shall issue a FAD and will notify the IFQ Allocation permit holder in writing. The IFQ Allocation permit holder shall have 30 days from the date of the FAD to comply with the terms of the FAD. If the IFQ Allocation permit holder does not comply with the terms of the FAD within this period, the Regional Administrator shall rescind the IFQ Allocation permit until such terms are met. If an appropriate payment is not received within 30 days of the date of a FAD, the Regional Administrator shall refer the matter to the appropriate authorities within the U.S. Department of the Treasury for purposes of collection. No permanent or temporary IFQ allocation transfers may be made to or from the allocation of an IFQ Allocation permit holder who has not complied with any FAD. If the Regional Administrator determines that the terms of a FAD have been met, the IFQ Allocation permit holder may renew the tilefish IFQ Allocation permit. If NMFS does not receive full payment of a recoverable cost fee prior to the end of the cost-recovery billing period immediately following the one for which the fee was incurred, the subject IFQ Allocation permit shall be deemed to have been voluntarily relinquished pursuant to paragraph (b)(7) of this section.

(4) *Periodic review of the IFQ program.* A formal review of the IFQ program must be conducted by the Council within 5 years of the effective date of the final regulations. Thereafter, it shall be incorporated into every scheduled Council review of the FMP (*i.e.,* future amendments or frameworks), but no less frequently than every 7 years.

§ 648.292 [Removed and reserved]

■ 10. Section 648.292 is removed and reserved.

■ 11. Section 648.293 is revised to read as follows:

§ 648.293 Tilefish trip limits.

Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 300 lb (138 kg) of tilefish at any time, unless the vessel is fishing under a tilefish IFQ Allocation permit, as specified at § 648.291(a). Any tilefish landed by a vessel fishing under an IFQ Allocation permit, on a given fishing trip, count as landings under the IFQ Allocation permit.

■ 12. Section 648.294 is added to read as follows:

§ 648.294 Framework specifications.

(a) *Within-season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Tilefish FMP.

(1) *Specific management measures.* The following specific management measures may be adjusted at any time through the framework process:

(i) Minimum fish size;

(ii) Minimum hook size;

(iii) Closed seasons;

(iv) Closed areas;

(v) Gear restrictions or prohibitions;

(vi) Permitting restrictions;

(vii) Gear limits;

(viii) Trip limits;

(ix) Overfishing definition and related thresholds and targets;

(x) Annual specification quota setting process;

(xi) Tilefish FMP Monitoring Committee composition and process;

(xii) Description and identification of EFH;

(xiii) Fishing gear management measures that impact EFH;

(xiv) Habitat areas of particular concern;

(xv) Set-aside quotas for scientific research;

(xvi) Changes to the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs;

(xvii) Recreational management measures, including the bag-size limit, fish size limit, seasons, and gear restrictions or prohibitions; and

(xviii) IFQ program review components, including capacity reduction, safety at sea issues, transferability rules, ownership concentration caps, permit and reporting requirements, and fee and cost-recovery issues.

(2) *Adjustment process.* If the Council determines that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, it will recommend, develop, and analyze appropriate management actions over the span of at least two Council meetings. The Council will provide the public with advance notice of the availability of the recommendation, appropriate justifications and economic and biological analyses, and opportunity to comment on the proposed adjustments prior to and at the second Council meeting on that framework action. After developing management actions and receiving public comment, the Council will submit the recommendation to the Regional Administrator; the recommendation must include supporting rationale, an analysis of impacts, and a recommendation on whether to publish the management measures as a final rule.

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council will make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur with the Council's recommendation, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

■ 13. Section 648.295 is added to subpart N to read as follows:

§ 648.295 Recreational possession limit.

Any person fishing from a vessel that is not fishing under a tilefish vessel permit issued pursuant to § 648.4(a)(12), may land up to eight tilefish per trip. Anglers fishing onboard a Charter/Party vessel shall observe the recreational possession limit.

■ 14. Section 648.296 is added to subpart N to read as follows:

§ 648.296 Gear restricted areas.

No vessel of the United States may fish with bottom-tending mobile gear within the areas bounded by the following coordinates:

Canyon	N. Lat.			W. Long.		
	Degrees	Min	Seconds	Degrees	Min	Seconds
Oceanographer	40.0	29.0	50.0	68.0	10.0	30.0
	40.0	29.0	30.0	68.0	8.0	34.8
	40.0	25.0	51.6	68.0	6.0	36.0
	40.0	22.0	22.8	68.0	6.0	50.4
	40.0	19.0	40.8	68.0	4.0	48.0
	40.0	19.0	5.0	68.0	2.0	19.0
	40.0	16.0	41.0	68.0	1.0	16.0
	40.0	14.0	28.0	68.0	11.0	28.0
Lydonia	40.0	31.0	55.2	67.0	43.0	1.2
	40.0	28.0	52.0	67.0	38.0	43.0
	40.0	21.0	39.6	67.0	37.0	4.8
	40.0	21.0	4.0	67.0	43.0	1.0
	40.0	26.0	32.0	67.0	40.0	57.0
	40.0	28.0	31.0	67.0	43.0	0.0
Veatch	40.0	0.0	40.0	69.0	37.0	8.0
	40.0	0.0	41.0	69.0	35.0	25.0
	39.0	54.0	43.0	69.0	33.0	54.0
	39.0	54.0	43.0	69.0	40.0	52.0
Norfolk	37.0	5.0	50.0	74.0	45.0	34.0
	37.0	6.0	58.0	74.0	40.0	48.0
	37.0	4.0	31.0	74.0	37.0	46.0
	37.0	4.0	1.0	74.0	33.0	50.0
	36.0	58.0	37.0	74.0	36.0	58.0
	37.0	4.0	26.0	74.0	41.0	2.0

[FR Doc. E9–20207 Filed 8–21–09; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective August 24, 2009 and is applicable beginning August 13, 2009.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(a), pertaining to the placement of the masthead light on the ship's fore and aft centerline. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, the Navy amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Two by adding, in alpha numerical order by vessel number, an entry for USS PROVIDENCE (SSN 719);

The additions read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	Number	Masthead lights distance to stbd of keel in meters; Rule 21 (a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
* *	*		*	*		*		*	
USS PROVIDENCE	SSN 719	0.41	X	X	X	X	X	X	X
* *	*		*	*		*		*	

* * * * *

Approved: August 13, 2009.

C.J. Spain,

Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Acting.

[FR Doc. E9–20280 Filed 8–21–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 0907291194–91213–01]

RIN 0648–XQ71

Listing Endangered and Threatened Species: Change in Status for the Upper Columbia River Steelhead Distinct Population Segment

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

ACTION: Final rule; correcting amendment.

SUMMARY: We, NMFS, announce that the Upper Columbia River steelhead is reclassified as a threatened species consistent with a recent court ruling. We also correct the table of threatened fishes to indicate that the same species is listed as threatened under the Endangered Species Act of 1973 (ESA). This species was inadvertently dropped from the table during an unrelated rulemaking.

DATES: Effective August 24, 2009.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Eric Murray, NMFS, Northwest Region, (503) 231–2378; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

In 1997, we completed a comprehensive status review of West Coast steelhead (*Oncorhynchus mykiss*) that resulted in ESA listings for Upper Columbia River (UCR) steelhead and nine other distinct population segments (DPSs) of West Coast steelhead (62 FR 43937; Busby *et al.*, 1996). At that time, we determined that the UCR steelhead was an endangered species. In January 2006, we reclassified the UCR steelhead from endangered to threatened based on an updated review that noted increasing steelhead abundance, more widespread spawning, and artificial propagation programs aimed at improving local adaptation and diversity within the range of this DPS (71 FR 834; January 5, 2006). The decision to downlist UCR steelhead was also based on our application of a recent Policy on the Consideration of Hatchery-Origin Fish in Endangered species Act Listing Determinations for Pacific Salmon and Steelhead (70 FR 37204: June 28, 2005). Subsequent to this downlisting, we also published protective regulations (71 FR 5178; February 1, 2006), designated critical habitat (70 FR 52630; September 2, 2005), and adopted a recovery plan (72 FR 57303; October 10, 2007) for UCR steelhead. In April 2006, our decision to downlist UCR steelhead from endangered to threatened was challenged in the U.S. District Court for the Western District of Washington.

On June 13, 2007, the district court ruled that we had erred in downlisting UCR steelhead, concluding that we had not given appropriate consideration to self-sustaining natural populations (*Trout Unlimited* v. *Lohn*, C06–0483–JCC, 2007). The result of this ruling was to return UCR steelhead to endangered status. We appealed that decision to the U.S. Court of Appeals for the Ninth Circuit, and on March 16, 2009, that court ruled that our downlisting did not violate the ESA and that, on remand, the district court should grant NMFS' motion for summary judgment. Accordingly, on June 18, 2009, the district court revised its ruling, effectively re-instating UCR steelhead to threatened status under the ESA.

Current Status

Consistent with the Courts' rulings and our listing determination of January 5, 2006 (71 FR 834), the UCR steelhead is listed as threatened under the ESA. Critical habitat was designated for UCR steelhead on September 2, 2005 (70 FR 52630). The protective regulations issued for UCR steelhead on February 1, 2006 (71 FR 5178) are now effective. A recovery plan was adopted for UCR steelhead on October 9, 2007 (72 FR 57303).

Correcting Amendment

In the May 9, 2006, issue of the **Federal Register**, we published a final rule to implement our determination to list elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals as threatened species under the ESA (7l FR 26852). In the same action, we made a format change to ensure that all threatened species listed under sect;(223.102 were in table format to match the threatened fishes table. By mistake, we did not include the already listed UCR steelhead DPS in § 223.102(c). This document corrects the table in § 223.102(c) to include the UCR steelhead DPS as a threatened species.

References

Copies of previous **Federal Register** Notices and reference materials are available on the Internet at *http://www.nwr.noaa.gov*, or upon request (see **FOR FURTHER INFORMATION CONTACT** section above).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: August 17, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 223 is corrected by making the following correcting amendment:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

■ 2. In § 223.102, paragraph (c)(25) is added to the table to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation(s) for Critical Habitat Designation(s)
Common Name	Scientific Name			
(c) * * *				
(25) Upper Columbia River steelhead	*Oncorhynchus mykiss*	U.S.A., WA, Distinct Population Segment including all naturally spawned anadromous *O. mykiss* (steelhead) populations below natural and manmade impassable barriers in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.-Canada border, as well as six artificial propagation programs: the Wenatchee River, Wells Hatchery (in the Methow and Okanogan Rivers), Winthrop NFH, Omak Creek, and the Ringold steelhead hatchery programs.	71 FR 834; January 5, 2006	70 FR 52630; September 2, 2005
*	*	* *	* *	*

[1]Species includes taxonomic species, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996) and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. E9–20315 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206152–9249–01]

RIN 0648–AX61

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Emergency Rule; Extension

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS is continuing emergency measures to reduce the target total allowable catch (TAC) and associated days-at-sea (DAS) allocations in the Atlantic deep-sea red crab fishery, based on recent scientific information. The red crab stock was assessed by the Data Poor Stocks Working Group in the fall of 2008, and a final report published in January 2009 indicates that the current estimate of maximum sustainable yield (MSY) for red crab is no longer reliable. This action is necessary to comply with the objectives of the Deep-Sea Red Crab Fishery Management Plan (FMP), as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is intended to prevent unsustainable fishing of the red crab resource while the New England Fishery Management Council (Council) develops specifications and measures to address the new assessment results.

DATES: The expiration date of the emergency rule published March 6, 2009 (74 FR 9770); is extended to February 28, 2010, or until superseded by another final rule which will publish in the **Federal Register**.

ADDRESSES: Copies of the Small Entity Compliance Guide, the Regulatory Impact Review (RIR), and the Environmental Assessment (EA) prepared for the March 6, 2009, emergency interim final rule are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: NMFS published a rule that implemented emergency measures to prevent unsustainable fishing in the Atlantic deep-sea red crab fishery in response to results from the Northeast Fisheries Science Center's Data Poor Stocks Working Group and Review Panel. A temporary rule justifying emergency action and soliciting public comment on the emergency management measures was published on March 6, 2009 (74 FR 9970), and NMFS accepted comments through April 6, 2009. The measures implemented by the emergency interim final rule include: (1) a reduction in the 2009 target total allowable catch from 5.928 million lb (2,689 mt) to 3.56 million lb (1,615 mt); and (2) a reduction in the number of DAS initially allocated to each of the five limited access permit holders from 156 DAS to 116 DAS. However, as has occurred each year since 2003, one of the limited access permits has been declared out of the fishery for the 2009 fishing year. Therefore, the total fleet-wide allocation of 582 DAS is reallocated, and the resulting DAS allocation remains 146 DAS for each of the active four limited access permit holders. These measures became effective on April 6, 2009, and remain in effect for a period of 180 calendar days, expiring on September 2, 2009. A more detailed explanation and background for this action was provided in the rule published on March 6, 2009, and is not repeated here. This action extends these regulations through the end of the red crab fishing year. The

Council intends to incorporate the results of the Data Poor Stocks Workshop and Review Panel into the development of specifications for the 2010 fishing year and an upcoming amendment to the FMP.

NMFS has determined that this action complies with agency guidance for implementation of emergency measures under section 305(c) of the Magnuson-Stevens Act (August 21, 1997, 62 FR 44421). This rule is intended to address: (1) results from the recently published (January 20, 2009) final report of the Data Poor Stocks Working Group and Review Panel indicating that, based on the best available scientific information, the MSY for red crab is 33–40 percent less than previously estimated; (2) serious conservation and management problems in the fishery, which, if left unaddressed, would likely result in unsustainable fishing of the red crab stock; and (3) the need to immediately reduce the annual target TAC and DAS allocations for the 2009 fishing year in order to prevent unsustainable fishing. Without this action, unsustainable fishing is likely, which could cause more significant long-term impacts on the red crab resource and fishery than the short-term impacts to the fishery expected from this emergency action. The basis for taking this action is ecological in nature in that it is intended to prevent unsustainable fishing.

Comments and Responses to the March 6, 2009 Emergency Rule

Two comments were received from the New England Red Crab Harvester's Association, one on March 23, 2009, and a second on April 7, 2009. Both comments opposed the structure of the emergency rule and suggested alternative management measures. The first comment suggested eliminating DAS as a management measure for this fishery and converting the target TAC to a ''hard'' TAC, meaning that when the TAC is achieved, the fishery would be closed. The second comment requested that the DAS not be divided equally among the fleet, but rather used as a fleet-wide DAS allocation, allowing the New England Red Crab Harvester's Association to independently decide how many DAS each vessel would fish. The emergency rule was, and is, intended as a temporary stop-gap measure, based on recently developed results of the Data Poor Stocks Working Group to prevent unsustainable fishing within the confines of the current FMP while the Council develops new or additional measures and specifications for the FMP. It would not be appropriate, or even possible, to significantly change, within the timeframe of this rule, the management scheme as suggested by the commenter because such changes are beyond the scope of this temporary stop-gap measure and should be done through the Council process, not unilaterally by NMFS. Moreover, the type of changes suggested by the commenter are allocative in nature and would be administratively difficult, if not impossible, to implement in the time period needed to address unsustainable fishing for this fishing year.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under U.S.C. 553(b)(B) to waive any further prior notice and the opportunity for public comment on this action. This action continues emergency measures implemented on April 6, 2009, for up to 186 days beyond the current expiration date of September 2, 2009. The conditions prompting the initial emergency action still remain. In addition, there was opportunity to comment on the emergency measures continued by this temporary rule. Therefore, the AA finds that it would be impracticable and contrary to the public interest to delay the implementation of these measures by providing additional opportunities for public comment.

The AA also finds good cause under U.S.C. 553(d)(3) to waive the delayed effectiveness of this temporary rule. A 30-day delayed effectiveness period would be impracticable and contrary to the public interest by causing confusion among the industry, as it would change the regulations in the middle of a fishing year, and potentially lead to vessels overfishing their allocated DAS.

Pursuant to section 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the FMPs of the NE Region, other provisions of the Magnuson-Stevens Act, and other applicable law.

For the reason set forth in the preamble, the expiration date of the temporary rule (74 FR 9770) that published on May 6, 2009, is extended to February 28, 2010, or until it is superseded by another final rule, whichever comes first.

Dated: August 19, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–20308 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 162
Monday, August 24, 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

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB10

Required Scale Tests

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to amend one section of the regulations under the Packers and Stockyards Act of 1921, as amended (P&S Act), regarding the requirement that stockyard owners, market agencies, dealers, packers, or live poultry dealers that weigh livestock, live poultry, or feed, have their scales tested at least twice each calendar year at intervals of approximately 6 months. This proposal would amend the current regulations to state that the 6-month interval in which scale owners must have their scales tested each calendar year is no longer approximate. Specifically, the proposal would require that scale owners complete the first of the two scale tests between January 1 and June 30 of the calendar year. The remaining scale test would be required to be completed between July 1 and December 31 of the calendar year. In addition, a minimum period of 120 days would be required between these two tests. More frequent testing would still be required in cases where a scale does not maintain accuracy between tests. Finally, we are proposing to amend that section of the regulations to add ''swine contractors'' to the list of regulated entities to which the section applies. GIPSA believes that this proposed action would facilitate GIPSA's ability to regulate the business operations of stockyard owners, swine contractors, market agencies, dealers, packers, or live poultry dealers through the effective enforcement of the P&S Act.

DATES: Written or electronic comments received by October 23, 2009 will be considered prior to issuance of a final rule.

ADDRESSES: You may submit your written or electronic comments on this proposed rule to:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 1643–S, Washington, DC 20260–3642.
- E-mail comments to *comments.gipsa@usda.gov*.
- *Fax:* (202) 690–2173.

Comments should be identified as ''P&SP, Required Scale Tests,'' and should make reference to the date and page number of this issue of the **Federal Register**. All comments will become a matter of public record and available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the P&S Act (7 U.S.C. *et seq.*). Under authority delegated to GIPSA by the Secretary of Agriculture in section 407(a) of the P&S Act (7 U.S.C. 228), we are authorized to issue regulations necessary to carry out the provisions of the P&S Act.

Section 201.72 of the current regulations under the P&S Act (9 CFR 201.72) requires that each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, have such scales tested at least twice during each calendar year at intervals of approximately 6 months. Scale owners must then report the results of the scale tests to the GIPSA Packers and Stockyards Program (P&SP) regional office for the geographical region where the scale is located. Section 201.71 (9 CFR 201.71) requires that scales must meet all applicable requirements of the National Institute of Standards and Technology Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' most recently adopted and incorporated by reference into the P&S Act regulations (currently, the 1996 edition).

Under current procedures, the P&SP regional office, which has enforcement responsibility for the geographic location where a specific scale is located, notifies the scale owner that its scale is due for testing in the event that the scale owner has not filed a scale test report within the required 6-month timeframe. Thereafter, GIPSA sends the scale owner a follow-up letter, or Notice of Default, if GIPSA does not receive the scale test report within 30 days from the date that the scale test report was due. Finally, if the scale owner fails to provide GIPSA with the required test report, GIPSA issues to the scale owner a Notice of Violation, used to inform the scale owner that its scale test reports were not received within the required timeframe under P&S Act regulations. GIPSA also notifies the scale owner that the scale may not be used further until the violation is corrected.

Because the regulations now state that scale tests must be performed at ''approximately'' 6-month intervals, GIPSA has found that it is difficult to determine when a scale owner may be in violation of the P&S Act for failing to submit a timely scale test report. As a result, GIPSA is proposing that section 201.72(a) (9 CFR 201.72(a)) of the P&SA regulations be amended to delete the term ''approximately'' in order to clearly state that scale owners must submit a scale test report to GIPSA every 6 months in a calendar year between the periods January 1 and June 30, and July 1 and December 31, respectively. GIPSA would continue to require more frequent testing of specific scales in cases where the scales do not maintain accuracy between tests.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–

171) (Act) amended the P&S Act to add ''swine contractor'' as a regulated entity. Section 10502 of the Act defined swine contractor as ''* * * any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if (a) the swine is obtained by the person in commerce; or (b) the swine (including products from the swine) obtained by the person is sold or shipped in commerce.''

Adding ''swine contractor'' to specific sections of the regulations would dispel any confusion among swine contractors regarding which regulations under the P&S Act are applicable to them. It would also allow GIPSA to more easily identify and enforce violations of the P&S Act.

Options Considered

We considered the option of leaving the term ''approximately'' in the regulations and instead issuing guidance on what GIPSA considers as being a timely report by a scale owner. GIPSA determined, however, that the regulations should be amended to clearly state the requirement for testing scales in order to give adequate notice to scale owners of when they would be in violation of the regulation. We believe that this proposed amendment to the regulations would enhance our effectiveness in regulating the business operations of stockyard owners, market agencies, dealers, packers, or live poultry dealers through the enforcement of the P&S Act.

We considered the option of not adding swine contractors to the regulations; we would continue to protect the interest of swine producers indirectly through regulation of packers, dealers, and market agencies. That option, however, is contrary to the intent of Congress, which amended the P&S Act to give GIPSA specific authority over swine contractors. The proposed changes to add swine contractor as a regulated entity would make this section consistent with other regulations under the P&S Act regarding regulated entities that have been amended to include swine contractors.

In addition, we are proposing to amend the wording of section 201.72 (9 CFR 201.72) to comply with the President's Memorandum of June 1, 1998, Plain Language in Government Writing (63 FR 31885). We are also proposing to amend 201.71(b) to substitute ''P&SP'' for ''P&S'' to reflect the current name of this USDA–GIPSA program.

Executive Order 12866 and Regulatory Flexibility Act

This 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 (OMB).

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA); GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes.[1] The affected entities and size threshold under the proposed rule would define as a small business: NAICS code 12111, cattle producers; NAICS code 112210, hog producers and swine contractors; and NAICS codes 112320 and 112330, broiler and turkey producers if their sales are less than $750,000 per year, respectively. Live poultry dealers, NACIS code 31165; and hog and cattle slaughterers, NACIS code 311611, respectively, are considered as small businesses if they have fewer than 500 employees. Stockyards are found under NACIS code 424520, ''Livestock Merchant Wholesalers,'' and are considered to be small businesses if they have fewer than 100 employees.

According to the 2008 Annual Report, Packers and Stockyards Program,[2] published on March 1, 2009, there were 339 bonded livestock slaughter firms, 126 live poultry dealers, 4,685 bonded dealers, 1,326 bonded market agencies, and 1,392 posted stockyards operating subject to the P&S Act. While many of these entities would be considered as small businesses by the SBA, we believe that our proposal would not affect those entities significantly since all of the entities, as scale owners, are already required to report scale test results to GIPSA twice in a calendar year at 6-month intervals. Again, we are proposing this amendment to the regulations to clarify the time interval that scale owners must have their scales tested in order to enhance GIPSA's ability to enhance its enforcement of the P&S Act. GIPSA believes that the benefits of this proposed rule outweigh the costs because every scale owner needs to understand the requirements for having their scales tested in order to avoid violating the P&S Act. While this proposed rule would also affect swine contractors, most such entities do not meet the definition for small entities under the SBA. Therefore, we are not providing an initial regulatory flexibility analysis.

We have considered the effects of this rulemaking action under the RFA and we believe that it will not have a significant impact on a substantial number of small entities. We welcome comments on the cost of compliance with this rule, and particularly on the impact of this proposed rule on small entities. We also welcome comments on alternatives to the proposed rule that would achieve the same purpose with less cost to, or burden upon scale owners.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This rule would not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Office of Management and Budget regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are covered by this proposed rule were approved under OMB number 0580–0015 on January 30, 2009, and expire on January 31, 2011.

E-Government Act Compliance

GIPSA is committed to complying 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.

List of Subjects in 9 CFR Part 201

Reporting and recordkeeping requirements, Measurement standards, Trade practices.

For the reasons set forth in the preamble, we propose to amend 9 CFR part 201 as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. The authority citation for part 201 would continue to read as follows:

Authority: 7 U.S.C. 181–229c.

[1] See: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[2] See: *http://archive.gipsa.usda.gov/pubs/2008_psp_annual_report.pdf.*

2. Section 201.72 is revised to read as follows:

§ 201.72 Scales; testing of.

(a) As a stockyard owner, swine contractor, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, you must have your scales tested by competent persons at least twice during each calendar year. As a scale owner, you must complete the first of the two scale tests between January 1 and June 30 of the calendar year. The remaining scale test must be completed between July 1 and December 31 of the calendar year. You must have a minimum period of 120 days between these two tests. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) As a stockyard owner, swine contractor, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry, you must furnish reports of tests and inspections on forms approved by the Administrator. You must retain one copy of the test and inspection report for yourself, and file a second copy with the P&SP regional office for the geographical region where the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by a State agency, municipality, or other governmental subdivision, the forms used by such agency for reporting such scale tests and inspections may be accepted in lieu of the forms approved for this same purpose by the Administrator if the forms contain substantially the same information.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–20337 Filed 8–21–09; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34–8E Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for GE CF34–8E series turbofan engines with certain part number (P/N) full authority digital electronic controls (FADECs) installed. That AD currently requires removing certain P/N FADECs. This proposed superseding AD would require removal of 12 more P/Ns of FADECs. This proposed AD results from 20 additional reports received of loss of thrust control events since AD 2008–16–01 was issued. We are proposing this AD to prevent loss of thrust control of the airplane.

DATES: We must receive any comments on this proposed AD by October 23, 2009.

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

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

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov*; telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2008–16–01, Amendment 39–15619 (73 FR 44628, July 31, 2008). That AD requires removal of certain P/N FADECs. That AD was the result of six loss of thrust control events from the same software fault scenario. That condition, if not corrected, could result in loss of thrust control of the airplane.

Actions Since AD 2008–16–01 Was Issued

Since AD 2008–16–01 was issued, we have received 20 additional reports of loss of thrust control events, totaling 26 events to-date. Those loss of thrust control events were due to fuel metering valve feedback faults caused by connector pin micro-arcing. As a result

we certified further FADEC software improvements. Removal of the 12 additional FADEC P/Ns will result in the removal of all FADEC software versions prior to version 8Ev5.41. The original purpose of software version 8Ev5.40 was to mitigate the effect of such faults. The improvements prevent loss of thrust control by detecting erroneous fuel metering valve feedback signals. No loss of thrust control events due to pin arcing have occurred with the software version 8Ev5.41 improvements incorporated into the FADECs.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD which would require removal of FADEC P/Ns 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, and 111E9320G49, within 660 flight hours time-in-service after the effective date of the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 273 engines installed on airplanes of U.S. registry. We also estimate that it would take about one work-hour per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour, with a parts cost per engine of $55. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $36,855. This cost estimate is independent of any possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15619 (73 FR 44628, July 31, 2008) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 23, 2009.

Affected ADs

(b) This AD supersedes AD 2008–16–01, Amendment 39–15619.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–8E series turbofan engines with full authority digital electronic controls (FADECs), part numbers (P/Ns) 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, or 111E9320G49 installed. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica S.A. (EMBRAER) ERJ 170 series airplanes.

Unsafe Condition

(d) This AD results from 20 additional reports received of loss of thrust control events since AD 2008–16–01 was issued. We are issuing this AD to prevent loss of thrust control of the airplane.

Compliance

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

Removal of CF34–8E FADEC Versions Prior to 8Ev5.41

(f) Within 660 flight hours time-in-service (TIS) after the effective date of this AD, remove FADEC P/Ns 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, and 111E9320G49.

Installation Prohibition

(g) After 660 hours TIS after the effective date of this AD, do not install any FADEC P/N 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, or 111E9320G49 onto any GE CF34–8E series engine.

Alternative Methods of Compliance

(h) 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

(i) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov*; telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

(j) Guidance on removal and replacement with an FAA-approved FADEC software version can be found in GE Alert Service Bulletin No. CF34–8E–AL S/B 73–A0020, dated November 12, 2008.

Issued in Burlington, Massachusetts, on August 17, 2009.

Peter A. White,

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

[FR Doc. E9–20281 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2009–0571]

RIN 1625–AA00

Safety Zone; BW PIONEER at Walker Ridge 249, Outer Continental Shelf FPSO, Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone around the BW PIONEER, a Floating Production, Storage and Offloading (FPSO) system, at Walker Ridge 249 on the Outer Continental Shelf. The purpose of the safety zone is to protect the FPSO from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the FPSO will significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: Comments and related material must be received by the Coast Guard on or before October 23, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0571 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Dr. Madeleine McNamara, U.S. Coast Guard, District Eight Waterways Management Coordinator; telephone 504–671–2103, *madeleine.w.mcnamara @uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0571), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2009–0571'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert USCG–2009–0571 and click ''Search.'' Click the ''open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

The proposed safety zone is in the deepwater area of the Gulf of Mexico in Walker Ridge 249 with a center point at 26°41′46.25″ N and 090°30′30.16″ W. For the purpose of this regulation, the deepwater area is considered to be waters of 304.8 meters (1,000 feet) or greater depth, extending to the limits of the Exclusive Economic Zone (EEZ). The United States EEZ extends from the baseline up to 200 nautical miles and is contiguous to the territorial sea of the United States. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and

the occasional recreational vessel. The deepwater area also includes an extensive system of fairways.

Petrobras America Inc. requested that the Coast Guard establish a safety zone around the FPSO BW PIONEER, which is a ship-shaped offshore production facility that stores crude oil in tanks located in its hull. It will attach to a moored turret buoy and move in a 360 degree arc around the position 26°41′46.25″ N and 090°30′30.16″ W. The turret buoy is detachable which allows the FPSO to disconnect while the buoy and turret drop below the water's surface to a predetermined depth. The FPSO has a capacity for storing 500,000 barrels of produced oil and is expected to be offloaded on a weekly basis via a floating hose that connects the FPSO to a shuttle tanker. During offloading operations, a shuttle tanker will connect its bow to the FPSO BW PIONEER and its stern to an attendant tug that will assist with safety spacing and stability of the operations. The facility is manned with a crew of 80 people.

The request for the safety zone was made due to safety concerns for both the personnel aboard the facility and the environment. Petrobras America Inc. indicated that it is highly likely that any allision with the facility would result in a catastrophic event. In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to: (1) The level of shipping activity around the facility; (2) safety concerns for personnel aboard the facility; (3) concerns for the environment; (4) the likeliness that an allision would result in a catastrophic event based on proximity to shipping fairways, offloading operations, production levels, and size of the crew; (5) the volume of traffic in the vicinity of the proposed area; (6) the types of vessels navigating in the vicinity of the proposed area; and, (7) the structural configuration of the facility.

Results from a thorough and comprehensive examination of the criteria, IMO guidelines, and existing regulations warrant the establishment of the proposed safety zone. The proposed regulation would reduce significantly the threat of allisions, oil spills, and releases of natural gas and increase the safety of life, property, and the environment in the Gulf of Mexico by prohibiting entry into the zone unless specifically authorized by the Commander, Eighth Coast Guard District.

Discussion of Proposed Rule

The Coast Guard is establishing a safety zone of 500 meters around the stern of the FPSO when it is moored to the turret buoy. The FPSO can swing in a 360 degree arc around the center point at 26°41′46.25″ N and 090°30′30.16″ W. If the FPSO detaches from the turret buoy, the safety zone of 500 meters will be measured from the center point. Entry into this zone is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or a designated representative. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at (504) 589–6225.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule is not a significant regulatory action due to the location of the FPSO BW PIONEER on the Outer Continental Shelf and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone will be able to safely travel around the zone without incurring additional costs.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in Walker Ridge block 249.

This safety zone will not have a significant economic impact or a substantial number of small entities for the following reasons: This rule will enforce a safety zone around a FPSO facility that is in an area of the Gulf of Mexico not frequented by vessel traffic and is not in close proximity to a safety fairway. Further, vessel traffic can pass safely around the safety zone without incurring additional costs.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Dr. Madeleine McNamara, U.S. Coast Guard, District Eight Waterways Management Coordinator; telephone 504–671–2103, *madeleine.w.mcnamara@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Add § 147.847 to read as follows:

§ 147.847 BW PIONEER Floating Production, Storage, and Offloading System Safety Zone.

(a) *Description.* The BW PIONEER, a Floating Production, Storage and Offloading (FPSO) system, is in the deepwater area of the Gulf of Mexico at Walker Ridge 249. The FPSO can swing in a 360 degree arc around the center point of the turret buoy's swing circle at 26°41′46.25″ N and 090°30′30.16″ W. The area within 500 meters (1,640.4 feet) around the stern of the FPSO when it is moored to the turret buoy is a safety zone. If the FPSO detaches from the turret buoy, the area within 500 meters around the center point at 26°41′46.25″ N and 090°30′30.16″ W will be a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: July 31, 2009.

Mary E. Landry,

Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. E9–20246 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0725]

RIN 1625–AA00

Safety Zone; Private Fireworks Show, Chesapeake Bay, Virginia Beach, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on Chesapeake Bay in the vicinity of the Virginia Beach Resort and Conference Center in Virginia Beach, VA in support of a private fireworks show. This action is intended to restrict access to the specified portion of Chesapeake Bay to protect the public from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before September 14, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0725 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Tiffany Duffy, United States Coast Guard Sector Hampton Roads Waterways Management Division; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0725), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu, select ''Proposed Rule'' and insert ''USCG–2009–0725'' in the ''Keyword'' box. Click ''Search,'' and then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert USCG–2009–0725 and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public meeting

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

Background and Purpose

On September 26, 2009, Dominion Fireworks will sponsor a private fireworks display on the Chesapeake Bay shoreline centered on position 36°55′17″ N/076°04′14″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, the United States Coast Guard proposes restricting access within 420 feet of the fireworks launch site.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on the navigable waters of the Chesapeake Bay within 420 feet of a fireworks barge in position 36°55′17″ N/076°04′14″ W (NAD 1983). This safety zone would be established in the vicinity of the Virginia Beach Resort & Conference Center, Virginia Beach, VA on September 26, 2009. In the interest of public safety, access to the safety zone would be restricted from 9 p.m. to 9:30 p.m. on September 26, 2009. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel would be authorized to enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule would not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone would be of limited size; and (iii) the Coast Guard would make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic

impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for only 30 minutes. Vessel traffic could pass safely around the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Tiffany Duffy, as indicated in the **FOR FURTHER INFORMATION CONTACT** section. 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 proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone around a fireworks display. The fireworks will be launched from a barge; however, some fallout may enter the water within a 420-foot radius of the launching site. This zone is designed to protect mariners from the hazards associated with fireworks displays. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T05–0725, to read as follows:

§ 165.T05–0725 Safety Zone; Private Fireworks Show, Chesapeake Bay, Virginia Beach, VA.

(a) *Regulated Area.* The following area is a safety zone: All navigable waters within 420 feet of position 36°55′17″ N/076°04′14″ W (NAD 1983), in the vicinity of the Virginia Beach Resort & Conference Center, Virginia Beach, VA.

(b) *Definitions.* As used in this section, Captain of the Port *representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number 757–668–5555.

(4) The Captain of the Port Representative enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement Period.* This rule is effective and will be enforced on September 26, 2009, from 9 p.m. to 9:30 p.m.

Dated: August 11, 2009.

M.S. Ogle,

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

[FR Doc. E9–20245 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN32

Stressor Determinations for Posttraumatic Stress Disorder

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations governing service connection for posttraumatic stress disorder (PTSD) by liberalizing in some cases the evidentiary standard for establishing the required in-service stressor. This amendment would eliminate the requirement for corroborating that the claimed in-service stressor occurred if a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist confirms that the claimed stressor is adequate to support a diagnosis of PTSD, provided that the claimed stressor is consistent with the places, types, and circumstances of the veteran's service and that the veteran's symptoms are related to the claimed stressor.

This amendment takes into consideration the current scientific research studies relating PTSD to exposure to hostile military and terrorist actions. It is intended to acknowledge the inherently stressful nature of the places, types, and circumstances of service in which fear of hostile military or terrorist activities is ongoing. With this amendment, the evidentiary standard of establishing an in-service stressor would be reduced in these cases. This amendment is additionally intended to facilitate the timely VA processing of PTSD claims by simplifying the development and research procedures that apply to these claims.

DATES: Comments must be received by VA on or before October 23, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll free number). Comments should indicate that they are submitted in response to ''RIN 2900–AN32—Stressor Determinations for Posttraumatic Stress Disorder.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas J. Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has authority under 38 U.S.C. 501(a)(1) to prescribe regulations governing the nature and extent of proof and evidence required to establish entitlement to benefits. In addition, under 38 U.S.C. 1154(a), the Secretary is required to ''include in the regulations pertaining to service-connection of disabilities'' provisions requiring ''due consideration'' of the places, types, and circumstances of a veteran's service. These statutes provide authority for this proposed amendment of PTSD regulations.

Current regulations governing service connection of PTSD are provided at 38 CFR 3.304(f). Under this provision, service connection for PTSD generally requires: (1) Medical evidence diagnosing PTSD; (2) medical evidence establishing a link between a veteran's current symptoms and an in-service stressor; and (3) credible supporting evidence that the claimed in-service stressor occurred.

In some cases, the requirement to establish the occurrence of the claimed in-service stressor can be met based on the veteran's lay testimony alone, provided that there is an absence of clear and convincing evidence to the contrary and that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service. Such cases are those described under § 3.304(f)(1), when the evidence establishes a diagnosis of PTSD during service and the claimed stressor is related to that service; under § 3.304(f)(2), when the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat; and under current § 3.304(f)(3), when the evidence establishes that the veteran was a prisoner-of-war and the claimed

stressor is related to that prisoner-of-war experience. Currently, in all other cases where service connection for PTSD is claimed, VA regulations require credible supporting evidence corroborating the occurrence of the claimed in-service stressor before service connection can be established.

VA is proposing to amend § 3.304(f) by redesignating current paragraphs (3) and (4) as paragraphs (4) and (5) and adding a new paragraph (3), stating that, if a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. VA proposes to limit the confirmation of a claimed stressor to an examination by a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, to ensure standardization and consistency of mental health evaluations and reporting of these evaluations, which will be based upon uniform VA examination protocols.

Under 38 CFR 4.125(a), all mental disorder diagnoses must conform to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (1994) (DSM–IV). According to DSM–IV at 427–428, the first diagnostic criterion for PTSD is:

> The person has been exposed to a traumatic event in which both of the following have been present:
>
> (1) The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others;
>
> (2) The person's response involved intense fear, helplessness, or horror.

The evidentiary liberalization we propose in new § 3.304(f)(3) is consistent with DSM–IV criteria for a PTSD diagnosis, which include experiencing or confronting ''a threat to the physical integrity of self or others'' and ''intense fear, helplessness, or horror'' in response.

Also consistent with DSM–IV, the proposed new § 3.304(f)(3) defines ''fear of hostile military or terrorist activity'' to mean that ''a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.'' A claimed stressor must be consistent with the places, types, and circumstances of the veteran's service.

Additionally, the proposed regulation change is consistent with scientific studies related to PTSD and military troop deployment. In the recently published Gulf War and Health: Volume 6, Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress (2008), the National Academies' Institute of Medicine (IOM) reviewed studies on PTSD in veterans who served in Vietnam, the Gulf War, Operation Enduring Freedom (OEF), and Operation Iraqi Freedom (OIF). The IOM review analyzed the long-term mental and physical health effects of ''deployment to a war zone.'' The stressors associated with ''deployment to a war zone'' were not limited to combat because

> [A]s military conflicts have evolved to include more guerilla warfare and insurgent activities, restricting the definition of deployment-related stressors to combat may fail to acknowledge other potent stressors experienced by military personnel in a war zone or in the aftermath of combat. Those stressors include constant vigilance against unexpected attack, the absence of a defined front line, the difficulty of distinguishing enemy combatants from civilians, [and] the ubiquity of improvised explosive devices. * * *

(Summary, p. 2) The IOM ''considered that military personnel deployed to a war zone, even if direct combat was not experienced, have the potential for exposure to deployment-related stressors that might elicit a stress response.'' (Introduction, p. 13)

Based on these IOM findings, VA is proposing to reduce the burden of showing the occurrence of an in-service stressor if the claimed stressor is related to fear of hostile military or terrorist activity, and is consistent with the places, types, and circumstances of the veteran's service. The proposed amendment is intended to reduce the time devoted to VA claims development and research of the claimed stressor that is required to adjudicate claims for service connection for PTSD. VA will instead rely on a veteran's lay testimony alone to establish occurrence of a stressor related to fear of hostile military or terrorist activity, provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, if a VA mental health professional opines that the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor. The proposed amendment would benefit all veterans and would not be limited to veterans serving during the current OEF and OIF. Improved timeliness, consistent decision-making, and equitable resolution of PTSD claims are the intended results of the revised regulation.

Paperwork Reduction Act

This document contains no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The Office of Management and Budget has approved the collection of information provisions that are related to this proposed rule under OMB control number 2900–0001 (VA Form 21–526, Veterans Application for Compensation and Pension) and under OMB control number 2900–0075 (VA Form 21–4138, Statement in Support of Claim).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

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). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (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 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 the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that will raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 year. This proposed rule would have no such effect on State, local, and Tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.109, Veterans Compensation for Service-Connected Disability and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: June 29, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.304 as follows.

a. Revise the introductory text of paragraph (f).

b. Redesignate paragraphs (f)(3) and (4) as paragraphs (f)(4) and (5) respectively.

c. Add new paragraph (f)(3).

The revision and addition read as follows:

§ 3.304 Direct service connection; wartime and peacetime.

* * * * *

(f) *Posttraumatic stress disorder.* Service connection for posttraumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred. The following provisions apply to claims for service connection of posttraumatic stress disorder diagnosed during service or based on the specified type of claimed stressor:

* * * * *

(3) If a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of posttraumatic stress disorder and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary, and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor. For purposes of this paragraph, ''fear of hostile military or terrorist activity'' means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran's response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

* * * * *

[FR Doc. E9–20339 Filed 8–21–09; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2008–0924; FRL–8948–1]

RIN 2060–AP40

Regulation of Fuels and Fuel Additives: Federal Volatility Control Program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to establish an applicable standard of 7.8 pounds per square inch (psi) Reid vapor pressure (RVP) under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area during the high ozone season—June 1st to September 15th of each year—beginning in 2010. This action would require the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer, and Weld counties.

DATES: *Comments.* Comments must be received on or before September 23, 2009, unless a public hearing is requested by September 14, 2009.

Public Hearing. To request a public hearing, contact Sean Hillson at (734) 214–4789 or *hillson.sean@epa.gov*. If a hearing is requested no later than September 14, 2009, a hearing will be held at a time and place to be published in the **Federal Register**. Persons wishing to testify at a public hearing must contact Sean Hillson at (734) 214–4789, and submit copies of their testimony to the docket and to Sean Hillson at the addresses below, no later than 10 days prior to the hearing. After any such hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments. If a hearing is held, EPA will publish a notice in the **Federal Register** extending the comment period for 30 days after the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0924, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*.
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OAR–2008–0924. Please include a duplicate copy, if possible. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Hand Delivery: Air and Radiation Docket, EPA, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0924. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The Docket ID No. for this action is EPA–HQ–OAR–2008–0924. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Public Reading Room, EPA/DC, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The 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 Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Sean Hillson, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mailcode AASMCG, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4789; fax number: (734) 214–4052; e-mail address: *Hillson.Sean@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'', or ''our'' is used, we mean EPA. This document concerns the amendment to EPA's regulations governing gasoline supplied to the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area.

Regulated Entities. Entities potentially affected by this rule are fuel producers and distributors who do business in Colorado. Regulated entities include:

Examples of potentially regulated entities	NAICS codes [a]
Petroleum Refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

[a] North American Industry Classification System (NAICS).

This table provides only a guide for readers regarding entities likely to be regulated by this action. You should carefully examine the regulations in 40 CFR 80.27 to determine whether your facility is impacted. If you have further questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Outline

I. Introduction
II. What Is the History of Gasoline Volatility Regulation?
III. What Are the EPA Rulemaking Actions Addressing the Transition From the 1-Hour to the 8-Hour Ozone NAAQS?
IV. What Information Supports More Stringent Federal RVP Requirements in Colorado's 8-Hour Ozone Nonattainment Areas?
A. History
B. Cost/Benefit Analysis
V. Proposed Action
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
VII. Legal Authority and Statutory Provisions

I. Introduction

Section 211(h) of the Clean Air Act (CAA) requires that EPA promulgate regulations establishing a maximum RVP of 9.0 psi for gasoline introduced into commerce during the high ozone season. It also provides that EPA shall ''establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.'' In today's action, EPA is proposing to establish an applicable standard for gasoline at 7.8 pounds per square inch (psi) under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 8-hour ozone nonattainment area (as codified in volume 40 of the Code of Federal Regulations (CFR) Part 81) during the high ozone season. This action would require the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer and Weld counties.

This notice describes our proposed action to set the RVP limit for gasoline

at 7.8 psi RVP gasoline in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 8-hour nonattainment area during the high ozone season.

This preamble is organized into six parts. Section I is this introduction. Section II provides the history of federal gasoline volatility regulation. Section III describes EPA's rulemaking actions to transition from the 1-hour to the 8-hour ozone standard. Section IV provides information to support the Agency's proposed action regarding tightening of the volatility standards in the prior Denver Ozone Early Action Compact (EAC) area that is now effectively designated nonattainment under the 1997 8-hour ozone standard.[1] Section V summarizes the Agency's proposed action. Finally, Section VI is a review of applicable statutory and Executive Orders.

II. What Is the History of Gasoline Volatility Regulation?

In 1987, EPA determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment.[2] Evaporative emissions from gasoline, referred to as volatile organic compounds (VOCs), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

Under section 211(c) of the Clean Air Act (CAA or ''the Act''), we promulgated regulations on March 22, 1989, that set maximum limits for the RVP of gasoline sold during the summer ozone control season—June 1st to September 15th. These regulations were referred to as Phase I of a two-phase nationwide[3] program, which was designed to reduce the volatility of commercial gasoline during the summer ozone control season.[4] On June 11, 1990, EPA promulgated more stringent volatility controls under Phase II of the volatility control program.[5] These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the State, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone National Ambient Air Quality Standard or ''NAAQS'') during the ozone control season.

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the ozone control season. It further requires EPA to establish more stringent RVP standards in nonattainment areas if we find such standards ''necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.'' Section 211(h) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that we may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991, EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA.[6] The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for the 1-hour ozone standard, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published in 1990.[7]

III. What Are the EPA Rulemaking Actions Addressing the Transition From the 1-Hour to the 8-Hour Ozone NAAQS?

In July 1997, EPA promulgated a revised ozone standard which would be measured over an 8-hour period, *i.e.,* the 8-hour ozone NAAQS or standard.[8] The 8-hr Ozone NAAQS rule was challenged by numerous litigants and in May 1999, the U.S. Court of Appeals for the D.C. Circuit issued a decision remanding, but not vacating, the 8-hour ozone standard. In February 2001, the Supreme Court upheld our authority to set the ozone NAAQS and remanded the case to the D.C. Circuit Court for disposition of issues the Court did not address in its initial decision.[9] The Court of Appeals addressed these remaining issues and upheld the 8-hour ozone NAAQS.[10] In April 2004, EPA designated and classified areas for the 1997 8-hr ozone standard.[11]

Additionally, in April 2004, we promulgated the Phase 1 Ozone Implementation rule that addressed the revocation of the 1-hour ozone NAAQS and identified the 1-hour requirements that would remain applicable after revocation (*i.e.,* the ''anti-backsliding provisions'').[12] These requirements varied based on areas' designation for the 1-hour standard and such areas' designation for the 1997 8-hour ozone NAAQS. Although the Phase 1 Ozone implementation rule was challenged in court and portions of the rule were vacated, the vacated portions of the rule are not relevant to today's proposed action.[13]

In November 2005, EPA promulgated the Phase 2 Ozone Implementation rule that addressed various control and planning obligations that are applicable to areas designated nonattainment for the 1997 8-hour ozone NAAQS.[14] No part of the Phase 2 Ozone implementation rule is relevant for today's proposed rulemaking.

IV. What Information Supports More Stringent Federal RVP Requirements in Colorado's 8-Hour Nonattainment Areas?

A. History

On November 6, 1991, we published ozone nonattainment designations for the 1-hour ozone NAAQS pursuant to sections 107(d)(1)(C), 107(d)(2)(A), and 107(d)(4)(A) of the CAA.[15] In that action, we noted that the Denver-Boulder area was designated nonattainment by operation of law under CAA Section 107(d)(1)(C) and we classified it as a ''transitional area'' as determined under section 185A of the CAA. The Denver-Boulder nonattainment area included the following counties: all of Denver, Douglas, and Jefferson Counties, Boulder County, excluding the Rocky Mountain National Park, and the portions of Adams and Arapahoe Counties west of Kiowa Creek. Because the Denver-Boulder area was designated as a transitional ozone nonattainment area, the applicable volatility standard for the Denver-Boulder area, under the

[1] 72 FR 53952 (Sept. 21, 2007).

[2] 52 FR 31274 (Aug. 19, 1987).

[3] Hawaii, Alaska and U.S. territories were exempted.

[4] 54 FR 11868 (Mar. 22, 1989).

[5] 55 FR 23658 (June 11, 1990).

[6] 56 FR 64704 (Dec. 12, 1991).

[7] 55 FR 23658 (June 11, 1990).

[8] 62 FR 38856 (July 18, 1997).

[9] *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001).

[10] *American Trucking Assoc.* v. *EPA,* 195 F.3d 4 (D.C. Cir., 1999).

[11] 69 FR 23857 (Apr. 30, 2004).

[12] 69 FR 23951 (Apr. 30, 2004).

[13] *S. Coast Air Quality Mgmt. Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006 rehearing denied *S. Coast Air Quality Mgmt. Dist.* v. *EPA,* 2007 U.S. App. Lexis 13751 (D.C. Cir. June 8, 2007).

[14] 70 FR 71612 (Nov. 29, 2005).

[15] 56 FR 56694 (Nov. 6, 1991).

Federal RVP rule promulgated on December 12, 1991, was 7.8 psi from June 1 to September 15 beginning in 1992. From 1992 through 2003, and in response to waiver petitions from the Governor of Colorado, however, we waived the 7.8 psi RVP standard for the Denver area and required the 9.0 psi standard instead. In depth discussions of these past actions can be found in the applicable **Federal Register** notices.[16] In 2004, based on monitored violations, we decided it was appropriate to require compliance with the 7.8 psi RVP standard in the Denver-Boulder area. As a result, the 7.8 psi RVP standard currently applies in the area that comprised the original Denver-Boulder 1-hour ozone nonattainment area as described in our November 6, 1991 **Federal Register** notice.[17]

As mentioned above, in 1997, EPA adopted a new, more stringent ozone NAAQS based on the latest ozone health effects information. The standard was set at a level of 0.08 ppm averaged over an 8-hour period. Attainment of the standard is based on the 4th maximum 8-hour ozone concentration recorded at each monitoring location each year, averaged over a three-year period.

State and regional agencies in the Denver metropolitan area entered into a voluntary agreement with EPA in December 2002 that laid out a process for achieving attainment with EPA's 1997 8-hour ozone standard in an expeditious manner, but no later than December 31, 2007. Called the Early Action Compact for Ozone (EAC), the agreement sets forth a schedule for the development of technical information and the adoption of control measures into the State Implementation Plan (SIP) needed to comply with the 8-hour standard by December 31, 2007 and maintain the standard beyond that date. The EAC Ozone Action Plan (OAP) was adopted by the Colorado Air Quality Control Commission (AQCC) in March 2004 and submitted to EPA in the summer of 2004. EPA promulgated approval of the OAP in the **Federal Register.**[18] A revision to the OAP to preserve the reductions estimated in the original plan was approved by the AQCC on December 17, 2006. EPA approved the revision in February 2008.

In April 2004, EPA designated and classified areas of the country that violated the 1997 8-hour ozone standard. Based on 2001–2003 design values, the Denver area violated the 8-hour ozone standard at three monitors and was included on EPA's 2004 list of nonattainment areas. In addition, the geographic boundaries of the earlier 1-hour nonattainment area were expanded. However, based on terms in the Early Action Compact, EPA deferred the effective date of the area's nonattainment designation. The deferral was conditioned on the area continuing to meet the deadlines in the EAC and achieving the 8-hour standard by December 31, 2007 (based on air quality data from the 2005–2007 ozone seasons).

Despite measures in the OAP that reduced ozone-causing emissions in the Denver area, the area failed to achieve the standard by December 31, 2007. A three-year (2005–2007) design value of 0.085 ppm at one monitor (Rocky Flats North), violated the 8-hour ozone NAAQS.

Consequently, EPA did not continue the deferral of the effective date of the Denver 8-hour ozone nonattainment designation. The nonattainment designation became effective on November 20, 2007.[19] The 8-hour ozone nonattainment area is referred to as the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, ozone nonattainment area and includes the following counties: All of Adams, Arapahoe, Boulder (now including part of the Rocky Mountain National Park), Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. The Denver-Boulder-Greeley-Ft. Collins-Loveland 8-hour ozone nonattainment area is required to attain the standard as expeditiously as practicable, but no later than November 2010.

B. Cost Benefit Analysis

Gasoline with 7.8 psi RVP is already required in the former 1-hour ozone nonattainment area, which represents a significant portion of the fuel used in the newly expanded area. The change proposed in this action extends the low RVP fuel requirement to portions of Larimer and Weld counties and into the remaining portions of Arapahoe, Adams, Boulder and Broomfield counties. Denver is located in Petroleum Administration for Defense Districts (PADD) IV, which is the most isolated area within the 48 lower states of the U.S. in terms of supply. PADD IV includes the Rocky Mountain states (Montana, Idaho, Wyoming, Utah, and Colorado). Gasoline supply to the Denver market originates from 6 main refiners. These refiners vary in size, refining capacity and complexity. These refineries are: Suncor (Commerce City, CO), Valero Corp. (Commerce City, CO), Conoco-Phillips (Borger, TX), Valero Corp. (Sunray, TX), Sinclair Oil Corp. (Caper and Rawlings, WY), and Frontier Oil Corp. (Cheyenne, WY and El Dorado, KS).

The State estimates (see docket submittal) a total of 3.4 million gallons of gasoline per day (1.2 billion gallons per year) are consumed in the entire 1997 8-hour ozone nonattainment area; of that, approximately 665,616 gallons of gasoline per day (242.9 million gallons per year) are utilized in the 9.0 psi RVP areas of the 8-hour ozone nonattainment area. To further bound the incremental volume of low RVP gasoline that would need to be supplied to the expanded 8-hour ozone nonattainment area, the State sampled gas stations in the proposed expanded area and found that approximately 80% of gasoline in the expanded 8-hour ozone nonattainment area met Denver's more stringent 7.8 psi RVP base gasoline volatility requirement. This means that only 20% or 133,000 gallons per day, or 18.4 million gallons per summer (May 1st through Sept. 15th) will be affected if the area's volatility limit is set at 7.8 psi from the current 9.0 psi RVP. RVP compliance at the retail level runs from June 1st to September 15th. The May 1st date was used in the economic analysis to recognize that low RVP fuel must be produced at the refinery level prior to the retail compliance date such that terminals and retailers have sufficient time to turn tanks over prior to their required compliance.

There are two cost estimates applied for the proposed volatility control. The State estimates that reducing gasoline volatility to 7.8 psi RVP in the expanded 8-hour ozone nonattainment area could impact the cost of producing gasoline from 0 to 3.4 cents per gallon. We modeled the cost of reducing RVP when we evaluated the cost of benzene control for the Mobile Source Air Toxics (MSAT2) rulemaking.[20] That analysis used the linear program (LP) refinery model to estimate the costs. Because that analysis did not estimate RVP control costs for PADD IV, which includes Colorado, we rely on PADD II costs to be reflective. The per gallon cost estimate for 7.8 psi RVP control from that analysis was 0.45 cents per gallon. Using 133,000 gallons of gasoline per day to represent the share of the expanded 8-hour ozone nonattainment area gasoline market that would be required to meet the 7.8 psi RVP standard from June 1st through September 15th, at a cost of 0.45 to 3.4

[16] See 53 FR 26067 (April 30, 1993); 59 FR 15629 (April 4, 1994); 61 FR 16391 (April 15, 1996); 63 FR 31627 (June 10, 1998); and 66 FR 28808 (May 24, 2001).

[17] 56 FR 56735 (Nov. 6, 1991).

[18] 70 FR 44052 (Aug. 1, 2005).

[19] 72 FR 53952 (Sept. 21, 2007).

[20] 72 FR 8427 (Feb. 2, 2007).

cents per gallon, we estimate that reducing the gasoline volatility limit to 7.8 psi RVP for non-blended gasoline in this area, would result in a cost of less than $700,000 per summer ($600 to $4500 per day). Therefore, the marginal costs for the expanded nonattainment area do not exceed the threshold that would classify this action as significant.

V. Proposed Action and Rationale

EPA is proposing to establish an applicable standard of 7.8 psi RVP under the federal volatility control program in the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area (as codified in volume 40 of the Code of Federal Regulations (CFR) Part 81) during the high ozone season—June 1st to September 15th of each year—beginning in 2010. This action would require the use of 7.8 psi RVP gasoline in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson counties, and in portions of Larimer, and Weld counties.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action raises novel legal or policy issues arising out of legal mandates. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, the Colorado Department of Public Health and Environment prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in ''Analysis of Expansion of Low RVP Area by the State of Colorado''. A copy of the analysis is available in the docket for this action and the analysis is summarized in Section IV.B.

B. Paperwork Reduction Act

The information collection requirements contained in the phase I and phase 2 volatility rules (55 FR 11868, March 22, 1989 and 55 FR 23658, June 11, 1990) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.,* and have been assigned OMB control number 2060–0178. This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and therefore is not subject to these requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the expanded portion of the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area not already covered by low RVP requirements, and gasoline distributors and retail stations in those areas. We have determined that only one small refiner would be affected by the low RVP requirements. Other small entities, such as gasoline distributors and retail stations located in the area that will become a covered area as a result of today's action, will be subject to the same requirements as those small entities which are located in the current covered area. EPA believes the impacts these small entities (*e.g.* small blenders, importers, retailers, *etc.*) would occur primarily in the form of a slightly higher wholesale gasoline price which would then be passed along in product price increases. In the preamble of this notice, we have estimated low RVP costs to be 0.45 to 3.4 cents/gallon during the summer volatility season. There would be no fuel or price difference outside the summer control season (*i.e.,* during September 15 to May 1). Since all wholesale suppliers would increase prices by about the same amount, the competitive environment for small entities purchasing that gasoline should not be affected significantly. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule affects portions of the

Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area that were not previously part of the 1-Hour ozone nonattainment area. EPA estimates that a 133,000 gallons a day of gasoline would be affected by this rule; resulting in an economic impact of less than $700,000 per summer. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. This proposed rule impacts portions of the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado, 1997 8-hour ozone nonattainment area not previously part of the 1–Hour nonattainment area. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As described in section IV.B., the requirement to use low RVP gasoline in the expanded nonattainment area will result in an increase of roughly 3,200 barrels per day of low RVP gasoline that has to be supplied to the area. This increase in the volume of low RVP gasoline does not meet the threshold of being considered a ''significant energy action''.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the applicable 8-hour ozone NAAQS which establish the level of protection provided to human health or the environment. This rule will tighten the applicable volatility standard of gasoline during the summer possibly resulting in slightly lower mobile source emissions. Therefore disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result.

VII. Legal Authority and Statutory Provisions

Authority for this proposed action is in sections 211(h) and 301(a) of the Clean Air Act, 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: August 17, 2009.

Lisa P. Jackson,

Administrator.

Title 40, chapter I, part 80 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.27(a)(2)(ii), the table is amended by revising the entry for Colorado and footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(2) * * *

(ii) * * *

APPLICABLE STANDARDS [1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * *	*	*		*	*
Colorado [2]	9.0	7.8	7.8	7.8	7.8
* * *	*	*		*	*

[1] Standards are expressed in pounds per square inch (psi).
[2] The Colorado Covered Area encompasses the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area (see 40 CFR part 81).

* * * * *

[FR Doc. E9–20290 Filed 8–21–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2009–0602; FRL–8948–3]

RIN 2025–AA24

Toxics Release Inventory Articles Exemption Clarification Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to take two actions relating to the articles exemption under the Toxics Release Inventory (TRI) program. First, EPA proposes to formally remove a paragraph of guidance dealing with releases due to natural weathering of products that appeared in the Reporting Forms and Instructions (RF&I) from 1988 to 2001. This guidance was absent from the Reporting Forms and Instructions after 2001, but formal notice of its removal was never issued. EPA here provides notice that this language has been removed and may not be relied on by reporting facilities. Second, EPA is proposing an interpretation of how the articles exemption applies to the Wood Treating Industry, specifically to treated wood that has completed the treatment process. We are requesting comment on both of these actions.

DATES: Comments, identified by Docket ID No. EPA–HQ–TRI–2009–0602, must be received by EPA on or before October 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2009–0602, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov*
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–TRI–2009–0602. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption and must be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information for which disclosure is restricted by statute. Certain other materials, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open 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.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For specific information on this rulemaking contact: Steven DeBord, Toxics Release Inventory Program Division, Mailcode 2844T, OEI,

Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; Telephone: (202) 566–0731; E-mail: *DeBord.Steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

EPA has learned that there is some confusion in the regulated community regarding a paragraph discussing the articles exemption that appeared in the Reporting Forms and Instructions (RF&I) between 1988 and 2001. This paragraph paraphrased guidance issued in an October 24, 1988, letter to a specific facility. In 2001, we determined that the paragraph could be misinterpreted as indicating that the exemption has a broader scope than intended, and therefore the paragraph was not included in subsequent Reporting Forms and Instructions. Removal of the paragraph occurred without public notice or opportunity for comment. We are now providing notice of the removal and an opportunity for comment.

We are aware that the Wood Treating Industry has relied upon a misinterpretation of the RF&I paragraph in determining the amount of releases reportable from their facilities. We are proposing an explanation of how the articles exemption applies to the Wood Treating Industry.

II. Does This Action Apply to Me?

This action applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B, of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the individuals listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. This action is also relevant to those who utilize EPA's TRI information, including State agencies, local governments, communities, environmental groups and other non-governmental organizations, as well as members of the general public.

III. What Is EPA's Statutory Authority for Taking This Action?

These actions are proposed under sections 313(g), 313(h), and 328 of EPCRA, 42 U.S.C. 11023(g), 11023(h) and 11048, and section 6607 of the Pollution Prevention Act (PPA), 42 U.S.C. 13106.

In addition, Congress granted EPA broad rulemaking authority. EPCRA section 328 provides that the ''Administrator may prescribe such regulations as may be necessary to carry out this chapter'' (28 U.S.C. 11048).

IV. Background Information

A. What Are the Toxics Release Inventory Reporting Requirements and Who Do They Affect?

Pursuant to section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), certain facilities that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit annually to EPA and to designated State officials toxic chemical release forms containing information specified by EPA. 42 U.S.C. 11023. In addition, pursuant to section 6607 of the Pollution Prevention Act (PPA), facilities reporting under section 313 of EPCRA must also report pollution prevention and waste management data, including recycling information, for such chemicals. 42 U.S.C. 13106. These reports are compiled and stored in EPA's database known as the Toxics Release Inventory (TRI).

Regulations at 40 CFR part 372, subpart B, require facilities that meet all of the following criteria to report:

- The facility has 10 or more full-time employee equivalents (*i.e.,* a total of 20,000 hours worked per year or greater; see 40 CFR 372.3); and
- The facility is included in a North American Industry Classification System (NAICS) Code listed at 40 CFR 372.23 or under Executive Order 13148, Federal facilities regardless of their industry classification; and
- The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA section 313 (TRI) chemical in quantities greater than the established thresholds for the specific chemical in the course of a calendar year.

Facilities that meet the criteria must file a Form R report or, in some cases, may submit a Form A Certification Statement, for each listed toxic chemical for which the criteria are met. As specified in EPCRA section 313(a), the report for any calendar year must be submitted on or before July 1 of the following year. For example, reporting year 2004 data should have been postmarked on or before July 1, 2005.

The list of toxic chemicals subject to TRI reporting can be found at 40 CFR 372.65. This list is also published every year as Table II in the current version of the Toxics Release Inventory Reporting Forms and Instructions. The current TRI chemical list contains 581 chemicals and 30 chemical categories.

The manufacturing, processing, or otherwise use of a toxic chemical are threshold activities that trigger reporting to the TRI program. After a regulated facility determines it has performed a threshold activity with a listed chemical, that facility then calculates quantities of the chemical that are manufactured, processed, or otherwise used at the facility to determine if the threshold quantity has been exceeded and reporting is required. In 1988, EPA promulgated an articles exemption from threshold quantity calculations and reporting requirements for manufactured items that contain toxic chemicals. (53 FR 4500, February 16, 1988)

B. Definition of Article

The term ''article'' is defined in the TRI regulations at 40 CFR 372.3:

> ''Article'' means a manufactured item: (1) Which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design during end use; and (3) which does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishments.

C. Articles Exemption

The articles exemption at 40 CFR 372.38(b) states:

> *Articles.* If a toxic chemical is present in an article at a covered facility, a person is not required to consider the quantity of the toxic chemical present in such article when determining whether an applicable threshold has been met under § 372.25, § 372.27, or § 372.28 or determining the amount of release to be reported under § 372.30. This exemption applies whether the person received the article from another person or the person produced the article. However, this exemption applies only to the quantity of the toxic chemical present in the article. If the toxic chemical is manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the article, in excess of an applicable threshold quantity set forth in § 372.25, § 372.27, or § 372.28, the person is required to report under § 372.30. Persons potentially subject to this exemption should carefully review the definitions of article and release in § 372.3. If a release of a toxic chemical occurs as a result of the processing or use of an item at the facility, that item does not meet the definition of article.

V. What Led to the Development of This Proposed Rule?

In 2007, members of the wood treating industry (''the wood treaters'') contacted EPA for guidance on reporting releases from treated wood after it has left the treatment process and is either sitting on a drip pad or in storage. The wood

treaters cited various past EPA guidance documents including a paragraph found in the Reporting Forms and Instructions (RF&I) from 1988 to 2001 for the contention that they need not report releases from treated wood in storage. EPA responded in an October 15, 2007, letter explaining that the wood treaters had misinterpreted the past guidance and when the guidance is properly applied to their processes, releases from wood post-treatment must be reported to EPA. The wood treaters challenged this letter and, on May 15, 2008, a preliminary injunction was issued by the U.S. District Court for the District of Columbia against EPA enforcing its interpretation. EPA is proposing this rule to clarify past guidance on this issue and to provide an opportunity for public comment on its interpretation. The following is a chronology of relevant guidance that has been issued relating to the articles exemption and how it applies under circumstances of natural weathering.

In 1988, a facility that used plastic wrap to enclose their products posed a question to EPA concerning releases from the plastic. The facility asked how the articles exemption applied to extremely minor releases occurring from the hot-knife cutting of the plastic film. We explained in a letter that even though the releases were extremely small, they were in fact caused by the use of the film. (Oct. 24, 1988, letter from Charles Elkins, Director of Office of Toxic Substances, to Geraldine Cox of Chemical Manufacturers Association; ''Elkins letter''). As such, we determined that these releases were not exempt under the articles exemption because they resulted from use of the plastic wrap. To distinguish from these releases that were caused by use of the plastic, we addressed even smaller releases, for instance, releases that the plastic rolls emitted while sitting in storage before use. It is noteworthy that this facility did not manufacture the plastic wrap but had it delivered by an outside supplier. The rolls while sitting in storage had not yet been processed or used at the facility. We explained that certain very low level releases that occur over the life of the product would not disqualify an item from the articles exemption if they were analogous to ''weathering'' or ''natural deterioration.'' For the plastic film, we said ''the normal low-level migration of [toxic chemicals] from the plastic film does not constitute a release reportable under Section 313.''

In the 1988 RF&I, we inserted language paraphrasing the rationale of the Elkins letter. The inserted language in the RF&I said:

> You are not required to count as a release, quantities of an EPCRA section 313 chemical that are lost due to natural weathering or corrosion, normal/natural degradation of a product, or normal migration of an EPCRA section 313 chemical from a product. For example, amounts of an EPCRA section 313 chemical that migrate from plastic products in storage do not have to be counted in estimates of releases of that EPCRA section 313 chemical from the facility.

When the above-quoted text was reviewed in preparation for release of the 2002 RF&I, we determined that it could cause confusion among reporting facilities because the guidance was to be applied only in limited circumstances that were not clearly explained. The guidance was directed at items that had qualified as articles prior to any natural weathering because these items did not release toxic chemicals due to processing or use at the facility. It did not address how processing or use of an item could change the reportability of releases from the item. EPA, therefore, determined not to include this language in the 2002, and subsequent, RF&I. EPA did not, however, provide formal notice or explanation of the removal of this language.

VI. Proposed Action

A. First Proposed Action: Withdrawal of Paragraph From RF&I Guidance

With this proposed rule, we give notice of our intent to formally remove the following language that was found in the Reporting Forms and Instructions (RF&I) from 1988 to 2001:

> You are not required to count as a release, quantities of an EPCRA section 313 chemical that are lost due to natural weathering or corrosion, normal/natural degradation of a product, or normal migration of an EPCRA section 313 chemical from a product. For example, amounts of an EPCRA section 313 chemical that migrate from plastic products in storage do not have to be counted in estimates of releases of that EPCRA section 313 chemical from the facility.

We do not propose to replace this removed language in the RF&I and we will not rely upon this language in any future determinations. As discussed above, this paragraph was a poor paraphrasing of the 1988 Elkins letter. The interpretation set forth in the Elkins letter still represents Agency policy and is much better stated in that letter than it was in the short paraphrasing that appeared in the RF&I from 1988 to 2001. The Elkins letter, when read in its entirety, presents relevant context and explains clearly what constitutes natural weathering or deterioration and how these are addressed by the articles exemption. Given the ready availability of that guidance, we see no reason to either reproduce it or attempt to paraphrase it in the RF&I. We are requesting comment on the above interpretation and the corresponding removal of the paragraph in the RF&I.

B. Second Proposed Action: Application of This Interpretation to the Wood Treating Industry

As mentioned above, in at least one industry (facilities engaged in treating of lumber with preservatives such as creosote), some facilities have improperly used the articles exemption to avoid reporting potentially large releases from items in storage. In the case at hand, lumber had been impregnated with a number of toxic chemicals (as preservatives), and after treatment, the lumber sat in various types of holding areas, or was moved directly to transportation vehicles. In any case, it appeared that some amount of toxic chemicals continued to be emitted to the air (and/or still dripping to pads or the ground) at the facility as a result of the treatment. Several facilities had incorrectly applied the Elkins and RF&I guidance and determined that the releases and off-gassing of toxic chemicals from freshly manufactured treated wood products could be considered ''natural weathering'' or ''low-level migration'' releases and thus would be exempt from reporting based on the RF&I paragraph.

We do not dispute the assertion of the trade association representing wood treaters that some ambiguity existed in the various iterations of our past guidance with respect to appropriate treatment of very low levels of releases that are analogous to ''weathering'' or ''natural deterioration,'' and that further clarification with opportunity to comment would be appropriate. This proposed rule clarifies how the articles exemption applies to the wood treatment industry.

The articles exemption clearly states that an item releasing toxic chemicals *as a result of processing or use of the item,* does not qualify as an article. (40 CFR 372.38(b)) EPA did not intend for the phrase ''*as a result of processing or use''* to apply only at the instant of processing or use. That would imply that releases from an item that result from use or processing but occur at a later time could be ignored. When Congress passed EPCRA, the intent was to provide communities and others with as full a view as practicable with respect to releases of toxic chemicals. (42 U.S.C.11023) When EPA crafted the definition of article in 372.3, the Agency expected that the qualifier ''does not release a toxic chemical under normal conditions of processing or use'' of the

item was sufficient to reduce burden on facilities calculating threshold quantities and still capture important information on toxic releases. We emphasized in the 1988 preamble to the Final Toxic Chemical Release Reporting Rule ''that under this definition an item will not qualify as an article if there are releases of toxic chemicals from the normal use or processing of that item'' and when applying this definition, facilities ''should keep this release factor in mind.'' (53 FR 4507, February 16, 1988) The preamble did not specifically define ''normal use or processing,'' but it provided examples for applying the release factor. For instance, the milling of metals generates fume or dust which would disqualify the metal as an article. As a counterexample, if the only release is the disposal of solid scrap that is recognizable as having the same form as the item, the item can still qualify as an article. In general, the disposal of an item after use is not a release that would disqualify an item from being an article.

The original intent of the articles exemption was to reduce burden on facilities that had articles on their premises by reducing the materials that would have to be evaluated for threshold and release determinations. (53 FR 4507, February 16, 1988) The exemption was not intended to exclude reporting on releases that could lead to exposure to toxic chemicals and the qualifier to the definition of ''article'' was crafted to ensure those releases would still be reported.

As noted above, we are now aware of instances where items may have exited the production or manufacturing phase and are still releasing toxic chemicals at the facility—a scenario not discussed in the 1988 Final Rule. These items are being held in storage at the facility and despite the fact they are not in that instant being processed or used continue to release toxic chemicals that are due to the item's earlier processing or use at the facility.

For example, consider a manufacturer of treated lumber products that has finished the processing (*i.e.,* injection) of the lumber items. From the moment of the processing through and including when the lumber is in storage, the lumber continues to release toxic chemicals into the environment due only to the processing. If the chemicals hadn't been injected during the processing, they wouldn't be released during storage. So long as the lumber is releasing toxic chemicals as a result of the earlier processing, it will not qualify as an article. When the manufacturer incorrectly applies the articles exemption from the point processing ends, he or she undercounts facility-wide emissions to the environment.

EPA believes it is reasonable to limit the applicability of the articles exemption to releases other than those from processing or use of an item because the purpose of the TRI program is to provide comprehensive information on releases. Among other similar purposes, section 313 of EPCRA is intended to inform communities about toxic chemicals in their area and provide information to regulators to aid in the development of regulations. Without collecting information on post-processing releases, communities near lumber yards, and others such as regulators who need to understand facility-wide emissions, would be given a skewed view of the actual emissions from the wood treating operation as a whole.

Further, EPA believes wood treaters are in a unique position to provide information on post-processing releases because they have knowledge of the types and quantities of chemicals used in the treatment and of their likely disposition (*e.g.,* whether they stay in the product). Wood treaters may use the data they have available to them to estimate such releases. Section 313(g)(2) of EPCRA provides ''a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved.'' 42 U.S.C. 11023(g)(2). ECPRA does not require ''monitoring or measurement of the quantities, concentration or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation.'' *Id.* Given this standard for providing information on toxic chemicals, EPA believes that wood treating facilities should be able to use the existing data available to them to estimate releases from treated wood after it has exited the treatment process.

Post-processing releases are distinguishable from low-level releases due to natural weathering of articles because releases due to natural weathering are not the result of any processing or use of the article conducted at a facility. In other words, nothing a facility has done will cause these natural releases from articles to occur. Because the natural weathering occurs regardless of processing or use, the facility may not have any reliable information on how much is being released. Lacking any information of even what chemicals are involved could lead a facility to provide highly inaccurate information. EPA believes the usefulness of such reporting on releases from natural weathering from articles does not outweigh the burden required to report on such releases.

Based upon the discussion above, our interpretation of how the articles exemption applies to the Wood Treating Industry is:

1. The Elkins guidance concerning ''natural weathering'', ''natural deterioration'', or ''low-level migration'' releases of chemicals does not apply to releases that occur due to processing or use even if those releases occur after processing or use has ended;

2. There is a rebuttable presumption that any releases (*e.g.* off-gassing or drippage) of toxic chemicals from treated items at the wood treatment facility are ''as a result of processing or use at the facility;''

3. If a release of a toxic chemical occurs as a result of the processing or use of an item at the facility, that item does not meet the definition of article and the releases from the item are not exempt.

We are requesting comment on this interpretation of the TRI regulations.

VII. How will this action affect EPA rules and policies concerning toxic releases from materials held in storage at facilities?

Finally, we wish to summarize how releases from materials or items in storage that do not qualify as articles must be reported at facilities where a threshold activity has been triggered. Although storage is not a threshold activity, regulated facilities may still be required to report 313 toxic chemical releases from storage if a threshold activity is performed, and threshold quantities are exceeded at the facility. 40 CFR 372.25(c) states that ''the facility must report if it exceeds any applicable threshold and must report on all activities at the facility involving the chemical, except as provided in § 372.38.''

We have further explained this requirement when asked: ''If a facility has a chemical in storage but does not process or otherwise use it during the reporting year, is the owner/operator subject to reporting?'' Our response was:

> No. Storage, in itself, would not meet an activity threshold under EPCRA Section 313 (**Note:** the facility may have reporting requirements under other portions of EPCRA such as Sections 311 and 312). However, if the facility exceeds the manufacturing, processing, or otherwise use threshold for the same toxic chemical elsewhere at the facility, the facility must consider releases from the storage of the toxic chemical. The facility must also consider the amount of the Section

313 chemical in storage when calculating the maximum amount on-site during the year. (Question 87 found in the 1998 EPCRA Section 313 Questions and Answers document, December 1998, EPA 745–B–98–004)

With this proposed rule, we are not altering the requirement of reporting releases from items or products in storage when reporting is triggered by threshold activities at the facility.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866, Regulatory Planning and Review

OMB has determined this action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review under the EO. EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the ''Economic Analysis of the Toxics Release Inventory Articles Exemption Clarification Proposed Rule.'' A copy of the analysis, which is available in the docket for this action, is described below.

1. Methodology

This proposed rule is expected to create additional burden for only the Wood Preservation industry. No additional facilities will be brought under TRI jurisdiction through this rule.

This industry (NAICS 321114) consists of ''establishments primarily engaged in (1) treating wood sawed, planed, or shaped in other establishments with creosote or other preservatives such as chromated copper arsenate to prevent decay and to protect against fire and insects and/or (2) sawing round wood poles, pilings, and posts and treating them with preservatives (US Census Bureau, 2003).'' At issue in the proposed rule is the potential release (during storage) and subsequent reporting of TRI chemicals found in wood preservation. Clarification of the articles exemption rule as it applies to the correct reporting of these chemical releases will only apply to current TRI reporters as it does not affect reporting threshold calculations. It will not change the number of facilities reporting to TRI or the number of reports filed.

Since the proposed rule simply removes certain language and clarifies other language in the TRI Reporting Forms and Instructions document, facilities are only expected to incur burden due to rule familiarization. The current OMB-approved TRI reporting burden estimates assume that facilities have made all required calculations as a part of form completion. Therefore, any calculations that wood preservation facilities might incur to revise their release estimates to include quantities they currently do not include in release amounts are not attributable to the proposed rule given that they should already have been made.

Under the proposed rule, EPA expects that 252 Wood Preservation facilities (NAICS 321114) would incur rule familiarization burden. The incremental burden estimates associated with rule familiarization consist of time to read and interpret the clarified language outlined in the proposed rule and are based on the following assumptions:

- The first-year management burden includes 15 minutes to be briefed regarding the clarified language. It is assumed that facilities will fully comprehend the clarified language by the subsequent year of reporting; therefore, no rule familiarization burden is required in subsequent years.
- The first-year technical burden includes 30 minutes to read and interpret the clarified language. An additional 15 minutes will be required to brief management regarding the clarified language. It is assumed that facilities will fully comprehend the clarified language by the subsequent year of reporting; therefore, no rule familiarization burden is required in subsequent years.
- There is no first or subsequent-year burden on clerical staff associated with rule familiarization.

2. Cost and Burden Results

Unit and Total incremental reporting burden and costs associated with the proposed rule are presented in Tables 1 and 2 below.

TABLE 1—ESTIMATED FIRST AND SUBSEQUENT YEAR BURDEN ASSOCIATED WITH THE PROPOSED RULE

Activity	Labor category			Total unit burden	Number of facilities	Total burden
	Managerial	Technical	Clerical			
Incremental First-Year Burden (hours)						
Rule Familiarization	0.25	0.75	0.00	1.00	252	252
Total	0.25	0.75	0.00	1.00	252	252
Incremental Subsequent-Year Burden (hours)						
Form Completion	0.00	0.00	0.00	0.00	0	0
Total	0.00	0.00	0.00	0.00	0	0

TABLE 2—ESTIMATED INCREMENTAL COSTS ASSOCIATED WITH THE PROPOSED RULE

Activity	Unit cost	Number of facilities	Total cost
First Year			
Rule Familiarization	$55.07	252	$13,877
Annual Total			13,877

TABLE 2—ESTIMATED INCREMENTAL COSTS ASSOCIATED WITH THE PROPOSED RULE—Continued

Activity	Unit cost	Number of facilities	Total cost
Subsequent Years			
Rule Familiarization	$0.00	0	0.00
Annual Total			0.00

This proposed rule is estimated to result in one-time compliance burden of 252 hours with an associated cost of $13,877.00 to subject facilities in the first year that the rule takes affect.

3. Data Impacts

The impact of this action should be primarily the inclusion to the reportable emissions totals of any releases from treated lumber items that some facilities may have previously considered exempt as articles.

For more information, see the Economic Analysis of the Toxics Release Inventory Articles Exemption Clarification Proposed Rule.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 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 that requires Office of Management and Budget (OMB) approval under the PRA, unless it has been approved by OMB and displays a valid OMB control number. The information collection requirements related to the Toxic Release Inventory are already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* That Information Collection Requests (ICRs) documents have been approved under OMB control numbers 2070–0093 and 2070–0143 (EPA ICR numbers 1363 and 1704 respectively). This rule does not impose any new requirements that require additional OMB approval.

The Paperwork Reduction Act mandates that federal agencies estimate the record keeping and reporting burden of a proposed rule. In this context, the term ''burden'' is interpreted as the total time, effort, or financial resources expended by people to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed by regulated entities to review instructions and to develop, acquire, install, and use technology and systems to collect, validate, verify, and disclose information. Time taken to adjust existing ways to comply with any previously applicable instructions and requirements and to train personnel to respond to the information collection task is also included. In this section, burden hours for both the industry respondents and the government are estimated.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in (1) treating wood sawed, planed, or shaped in other establishments with creosote or other preservatives such as chromated copper arsenate to prevent decay and to protect against fire and insects and/or (2) sawing round wood poles, pilings, and posts and treating them with preservatives as defined by NAICS code 321114 with annual receipts less than 10 million dollars (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The estimated impacts to small companies under the proposed rule are presented in Table 3 below. The 252 facilities are owned by 158 parent companies. Of the 158 affected parent companies, 148 are small businesses. Of the affected small businesses, all 148 have cost impacts of less than 1%. No small businesses are projected to have a cost impact of 1% or greater. Of the 148 estimated cost impacts, there is a maximum impact of .089% and a minimum impact of 0.000001% each affecting one small business. The mean and median impacts are estimated to be 0.003% and 0.001% respectively.

TABLE 3—SUMMARY OF IMPACTS ON SMALL ENTITIES

	Estimated number of affected entities	Estimated number of affected small entities	Estimated number of small entities with impacts of 3 percent or greater	Estimated number of small entities with impacts between 1 and 3 percent	Estimated number of small entities with impacts less than 1 percent
First Year	158	148	0	0	148
% of Small Entities			0	0	100
Subsequent Years	0	0	0	0	0
% of Small Entities			0	0	0

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule is estimated to result in one-time compliance costs of $13,877.00 to the private sector. In addition, this rule does not create any additional federally enforceable duty for State, local and tribal governments. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

This proposed rule does not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals, Articles Exemption.

Dated: August 17, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–20293 Filed 8–21–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket Nos. 04–37 and 03–104; FCC 09–60]

Broadband Over Power Line Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document addresses certain issues from the Commission's Report and Order on rules for broadband over power line systems and devices (*BPL Order)* that was remanded by the United States Court of Appeals for the District of Columbia. In the *BPL Order,* the Commission established technical standards, operating restrictions and measurement guidelines for Access Broadband over Power Line (Access BPL) systems to promote the

development of such systems while ensuring that licensed radio services are protected from harmful interference. In *ARRL* v. *FCC,* the court remanded the *BPL Order* to the Commission for further consideration and explanation of certain aspects of its decision. Specifically, the court directed the Commission to provide a reasonable opportunity for public comment on unredacted staff technical studies on which it relied to promulgate the rules, to make the studies part of the rulemaking record, and to provide a reasoned explanation of the choice of an extrapolation factor for use in measurement of emissions from Access BPL systems.

DATES: Comments must be filed on or before September 23, 2009, and reply comments must be filed on or before October 8, 2009.

ADDRESSES: You may submit comments, identified by ET Docket No. 04–37 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Anh Wride, Office of Engineering and Technology, (202) 418–0577, e-mail: *Anh.Wride@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Request for Comment and Further Notice of Proposed Rule Making,* ET Docket No. 04–37 and 03–104, FCC 09–60, adopted July 16, 2009, and released July 17, 2009. The full text of this document is available for inspection and copying during normal business hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., (Room CY–A257), Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563 or via e-mail *FCC@BCPIWEB.com.* The full text may also be downloaded at: *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

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 & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Summary of Request for Further Comment and Further Notice of Proposed Rulemaking

1. This Request for Further Comment and Further Notice of Proposed Rulemaking (FNPRM), addresses certain issues from the Commission's Report and Order on rules for broadband over power line systems and devices (*BPL Order*), 70 FR 1360, January 7, 2005, that was remanded by the United States Court of Appeals for the District of Columbia. In the *BPL Order,* the Commission established technical standards, operating restrictions and measurement guidelines for Access Broadband over Power Line (Access BPL) systems to promote the development of such systems while ensuring that licensed radio services are protected from harmful interference. In *ARRL* v. *FCC,* the court remanded the *BPL Order* to the Commission for further consideration and explanation of certain aspects of its decision. Specifically, the

court directed the Commission to provide a reasonable opportunity for public comment on unredacted staff technical studies on which it relied to promulgate the rules, to make the studies part of the rulemaking record, and to provide a reasoned explanation of the choice of an extrapolation factor for use in measurement of emissions from Access BPL systems.

2. The unredacted staff technical studies have been placed into the record of the proceeding and the Commission is requesting comment on the information in those studies as it pertains to our BPL decisions. The Commission is also placing into the record certain additional materials that contain preliminary staff research and educational information and were not previously available therein. In response to its remand of a portion of the BPL measurement procedure, the Commission is also providing an explanation of our reasons for selecting 40 dB per decade as the extrapolation factor for frequencies below 30 MHz. The Commission further explains why it believes that the studies and technical proposal submitted earlier by the ARRL do not provide convincing information that we should use an extrapolation factor that is different from that which was adopted. The Commission also notes the existence of more recent studies that verify the correctness of our determination, although we do not rely on those studies as *post facto* rationale or justification for our decision.

3. Consistent with the opportunity provided by the court's remand and the Commission's stated intention in the *BPL Order* to review the decision on the extrapolation factor if new information becomes available, we are also re-examining the current extrapolation factor in light of the recently issued technical studies addressing the attenuation of BPL emissions with distance and efforts by the IEEE to develop BPL measurement standards. As the several studies now available show and as the Commission has observed previously, there can be considerable variability in the attenuation of emissions from BPL systems across individual measurement sites that is not captured in the fixed 40 dB per decade standard. To address this variability, the Commission is requesting comment on whether it should amend the BPL rules to (1) adjust the extrapolation factor downward to 30 dB or some other fixed value and, (2) as an alternative, also allow use of a special procedure for determining site-specific BPL extrapolation values using *in situ* measurements. The special *in situ* procedure the Commission is proposing is based on a concept under consideration by the Institute of Electrical and Electronics Engineers (IEEE) working group on power line communications technology electromagnetic compatibility (EMC). In addition, the Commission clarifies that parties testing BPL equipment and systems for compliance with emissions limits in our the rules may measure at the standard 30 meter distance rather than only the shorter distances recommended in the BPL measurement guidelines. The Commission request comments on the unredacted staff studies, our decision for selecting an extrapolation factor for BPL systems based on slant range method and the explanation provided herein, and our proposal to allow use of site-specific extrapolation factors as an alternative to the standard extrapolation factor. In the interim, as justified herein, the Commission will continue to apply the standard as adopted in the *BPL Order.*

Issues for Comment

A. Staff Technical Studies

4. In the *BPL Order,* the Commission adopted operational and technical requirements and restrictions on Access BPL devices over and above those applied to other Part 15 devices. These included requirements for consultation with specific entities, mandatory listing of BPL installations in a public database, exclusion of certain frequencies from operation, exclusion zones, frequency notching, and a remote shut-down mechanism, and were based on the aggregate information from comments and technical studies submitted into the rulemaking record, including ARRL's and FCC staff's studies.

5. Subsequent to the release of the *BPL Order,* the Commission on December 22, 2004 submitted five staff technical studies, in redacted form, into the record of the above-mentioned docket in response to a Freedom of Information Act (FOIA) request from ARRL. The staff studies measured emissions from various Access BPL systems at various locations in Pennsylvania, Maryland, New York, and North Carolina. The studies were used in the decision-making process along with studies submitted by commenters such as ARRL and the National Telecommunications and Information Administration (NTIA). The Commission redacted certain portions of those studies on the basis that they represented preliminary or partial results or staff opinions that were part of the internal deliberative process. On reconsideration of the *BPL Order,* ARRL alleged that the Commission violated the APA reasoned decision making requirements because it responded to ARRL's FOIA request belatedly and because it redacted certain information from the released information. The Commission disagreed with ARRL's arguments, and ARRL sought judicial review of the Commission's decisions in the *BPL Order* and the *Reconsideration Order.*

6. In *ARRL* v. *FCC,* the court determined that the APA requires the Commission to disclose the studies upon which it relies in promulgating rules, and it directed the Commission to make available for notice and comment the unredacted ''technical studies and data that it has employed in reaching [its] decision.'' In accordance with the court's mandate, and in response to a FOIA request from ARRL filed March 31, 2009, the Commission has placed in the record complete copies of the five staff studies identified by the court, including the previously redacted pages. The first two studies, included in a single file entitled *BPL Measurements in Allentown, PA,* contain data collected on the Amperion BPL system and on the Main.Net BPL system, both in Allentown, PA. The third study, *Emissions Measurements on Current Technologies Medium Voltage BPL System,* contains data collected on the Current Technologies BPL system in Potomac, MD. The fourth study, *BPL Summary After Briarcliff Manor, NY Test,* contains data collected on the Ambient BPL system in Briarcliff, NY, and some staff reactions. The fifth study, *BPL Emission Test Near Raleigh, NC,* contains data collected on the Amperion/Progress Energy BPL system in Raleigh, NC. The Commission observes that the redacted pages mostly contain information regarding specific test notes and test set-up recommendations with respect to the BPL systems at the various test sites, certain requests from third parties, and preliminary and partial data with respect to the noise floor and with respect to the attenuation rate of the signal strength at the test sites as well as the opinion of one staff member as to whether BPL systems are point-source systems and that staff member's proposed options on how to treat these systems. The Commission seeks comment on the information contained in these staff studies as it pertains to the issues in this proceeding.

7. The Commission has several staff working papers and video files that contain data and information on research from BPL field tests that were used in preparing the staff studies and

for staff education. These are materials that the Commission would not routinely, and in this case did not, place in the record. However, in order to fully and most efficaciously continue to examine this issue, the Commission believes it is important that it make available all potentially relevant research and information materials. The Commission is therefore placing these additional materials in the record of this proceeding and invites comment. A list of these additional materials is provided in Appendix E of this ''Request for Further Comment and FNPRM.''

B. Distance Extrapolation Factor

8. ARRL filed a petition for reconsideration of the Commission's decision to use 40 dB per decade as the extrapolation factor for frequencies below 30 MHz. In support of its argument that an extrapolation factor of 20 dB per decade should be used, ARRL also submitted, through *ex parte* comments, the results of three studies conducted by the United Kingdom's Office of Communications (OFCOM) and one by the Special International Committee on Radio Interference (CISPR) regarding emission measurements for BPL systems. On reconsideration, the Commission affirmed its decision to use the existing Part 15 distance extrapolation factor of 40 dB per decade decay rate for measuring BPL emissions on frequencies below 30 MHz, stating: ''No new information has been submitted that would provide a convincing argument for modifying this requirement at this time.''

9. In *ARRL* v. *FCC,* the court found that the Commission did not offer a reasoned explanation for its dismissal of empirical data that was submitted *ex parte* by ARRL, *i.e.,* the three studies conducted by OFCOM and additional ARRL analysis intended to suggest that an extrapolation factor of 20 dB per decade may be more appropriate for Access BPL. The court faulted the Commission for summarily dismissing the data submitted by ARRL because such a conclusory statement ''provides neither assurance that the Commission considered the relevant factors nor a discernable path to which the court may defer.'' The court ordered the Commission either to ''provide a reasoned justification for retaining an extrapolation factor of 40 dB per decade for Access BPL systems sufficient to indicate that it has grappled with the 2005 studies, or adopt another factor and provide a reasoned explanation for it.''

10. ARRL's proposal for a sliding scale extrapolation factor referenced a 1996 CISPR Standard. This standard, which was published in 1996 well before Access BPL was developed, evaluates radio noise generated by high-voltage converter power stations and similar high-voltage installations and discusses methods on how to reduce radio noise from inherent power line components, such as mercury arc and thyristor valves. ARRL pointed to a graph in the standard, Figure 17, which shows calculated values of the field strength attenuation of emissions from a vertical electrical dipole antenna as a function of the distance on a horizontal plane for different frequencies. Based on this graph, ARRL then proposed a formula which effectively constitutes a sliding-scale calculation for an extrapolation factor that varies with frequencies.

11. In the period of time since the Commission's adoption of the *Reconsideration Order,* reports have become available on two new technical studies addressing attenuation of BPL emissions with distance, one by NTIA in October 2007 that describes a second phase of its simulation study on the potential for interference from Access BPL systems (NTIA Phase 2 Study) and the other by the Federal Republic of Brazil (Brazil Study) in June 2008 that presents the results of a measurement study of BPL emissions. In addition, the Commission is aware that the IEEE working group on power line communications technology electromagnetic compatibility is working on a standard for EMC testing and measurements methodology for BPL equipment and installations (IEEE P1775/D2) that includes a provision for determining extrapolation (distance correction) factors on a site-by-site basis using *in situ* measurements as part of its work on that standard.

12. Consistent with the Commission's stated intention in the *BPL Order,* to review the decision on the extrapolation factor if new information becomes available and the opportunity provided by the Court's remand of the extrapolation factor for explanation, the Commission is reviewing its decision on that factor in light of the NTIA Phase 2 and Brazil studies and the site-specific option suggested by the IEEE P1775/D2 work. The Commission's goal is to provide BPL measurement procedures that will adequately ensure compliance with the § 15.209 emissions standard for emissions at or below 30 MHz without placing unfair or undue compliance burdens on equipment manufacturers and users. In conducting this review, the Commission advised interested parties that at this point it continues to believe that the decision to apply the existing 40 dB per decade distance attenuation extrapolation factor in the rules for Access BPL operations, in conjunction with slant distance, on frequencies in this range was reasonable and appropriate.

13. The Commission is also mindful that the Court has ordered that it provide a reasoned justification for retaining the 40 dB per decade extrapolation for Access BPL systems or adopt another factor and provide reasoning, and specifically remarked that the Commission did not offer an explanation for dismissing the technical studies and technical proposal for an alternative extrapolation submitted *ex parte* in 2005 by ARRL. The Commission is therefore providing an explanation of its reasons for selecting 40 dB per decade as the extrapolation factor for frequencies below 30 MHz and why it do not believe that the studies and technical proposal submitted earlier by the ARRL provide convincing information that the Commission should use an extrapolation factor that is different from (and, specifically, less than) 40 dB. The Commission believes that the NTIA Phase 2 and Brazil Studies further validate the use of 40 dB as the extrapolation factor. In addition, the sufficiency of the rules for ensuring compliance is further validated by the fact that the Commission has not had any new complaints of interference for more than two years.

14. The Commission also recognizes, however, that there can be considerable variability in the attenuation of emissions from BPL systems at individual measurement sites, although NTIA's modeling results do not generally indicate that differences are expected to be typically as high as the 15 to 20 dB for an underground system such as was observed in the Winchester Study. To address this variability, the Commission is requesting comment on whether it should adjust the extrapolation factor downward to 30 dB or some other fixed value and also specify and allow use of a special procedure for determining site-specific BPL extrapolation values using *in situ* measurements. The procedure for determining these site-specific extrapolation values would follow the general model under consideration in the IEEE P1775/D2 work.

15. The Commission is requesting that interested parties submit additional comment and information on the BPL extrapolation factor and on our proposal to modify the value specified for that factor and to alternatively allow use of special procedure for determining site-specific BPL extrapolation values. Such comment and information should

address (1) the three studies and proposal for a sliding scale extrapolation factor submitted previously by the ARRL as part of its *ex parte* filing on July 8, 2005 in conjunction with its petition for reconsideration of the *BPL Order* identified by the court, (2) the NTIA Phase 2 and Brazil studies with respect to findings on the extrapolation factor for BPL systems, and (3) our existing slant range method as it pertains to the effective field attenuation rate in a horizontal distance context. The Commission further request submission of any other new empirical studies or information that may inform us regarding the BPL distance attenuation extrapolation factor. Our goal is to ensure that the extrapolation factor used when tests cannot be made at the standard measurement distance provides effective protection to authorized services from harmful interference without unnecessarily burdening Access BPL technology.

a. The 40 dB per Decade BPL Extrapolation Factor

16. In explaining our reasoning for adopting 40 dB per decade as the extrapolation factor value for BPL emissions, it is important to understand that this is a measurement protocol (or ''tool''), not an adjustment to the emissions standard. The Commission first observed that a concern in the BPL proceeding was that BPL systems are not traditional point-source emitters. Rather, they could act to some extent in a manner similar to line source emitters that would radiate along the power lines, and, therefore the emissions from these systems would not attenuate in the same manner as a typical point-source emitter. In addressing this concern in the *BPL Order,* the Commission agreed with the ARRL that Access BPL systems on overhead lines are not traditional point-source emitters.

17. The Commission also observed that NTIA's earlier BPL computer simulation modeling as reported in the Technical Appendix to its June 2004 comments showed results indicating that the attenuation in field strength of emissions from BPL systems with distance from the power line is consistent with the existing distance extrapolation factors for unlicensed devices in § 15.31(f)(1) and (2) of the Commission's rules when used with the slant range to the power line. No party offered analysis or argument to dispute NTIA's results. These simulation results were conducted using the widely recognized and employed National Electromagnetic Code (NEC) software for analyzing radio propagation. Although, the Commission does not rely on NTIA's more recent Phase 2 simulation results to justify its earlier decision, the Commission noted here that those results indicate that the attenuation at individual locations can be expected to vary around the standard 40 dB value with frequency, configurations of line arrangements on poles, and other site-specific characteristics. The Commission is aware that measurements of the emissions from BPL systems at different distances will vary, but cluster around the 40 dB per decade factor. As the NTIA simulation results show, this variation is to be expected when measuring emissions below 30 MHz from points near the ground at distances close to a source of emissions.

18. While the Commission recognizes the potential value and importance of empirical data with respect to this issue, there were no significant studies that examined the very large number of measurements that would be needed to address the different site characteristics that affect the attenuation of emissions below 30 MHz. In this regard the studies submitted by the ARRL in its 2005 *ex parte* provided only anecdotal information on two different types of installations (overhead and underground) from two single sites, and also had certain methodological shortcomings. These studies did not provide sufficient information to support a statistically valid and comprehensive description of how BPL emissions attenuate over the short distances at which measurements are made.

19. The Commission specifically observed that only two of the studies (the Winchester Study and the Crieff Amperion Study) collected data relevant to the extrapolation factor. In addition, those two studies each report only a few measurements on a small number of operating frequencies along a single perpendicular path each at two small and very dissimilar BPL installations (one underground and one overhead) on power line configurations which may not be representative of power line configurations in the United States. In order for a study to provide statistically significant information on the attenuation of BPL emissions in the close vicinity of power lines and to adequately include signal conditions under different configurations of power lines on a pole or underground installations, a much larger body of empirical data at sites with varying configurations of power line attachments to poles and differing site characteristics would be needed. Moreover, such samples would need to demonstrate that they are conducted on power distribution systems representative of those found in the U.S.

20. Second, the RF propagation environments in which BPL emissions are measured can affect the results such that results from a given site may not be characteristic of the general rate at which BPL emissions attenuate. The measurements in these two studies were taken near the ground (as are measurements BPL emissions under our measurement procedure), where the field strength of radio signals, and particularly those below 30 MHz, is typically affected to a significant degree by reflections and absorption by the ground, nearby vegetation, vehicles, structures, measuring equipment, equipment stands, and even the positions of the persons making the measurements. Of particular importance in this context are the presence and configuration of other power lines in addition to the power line to which the BPL device is attached and of metallic structures and vehicles. Because of the effects of these factors, the field strengths of radio signals emitted at the same power level will often vary significantly when measured near the ground at different locations that are the same distance from a source. Thus, in order to obtain empirical data from which general conclusions about the attenuation characteristics of Access BPL emissions may be drawn, it is necessary to have a very large number of observations from different BPL installations and from different locations at those installations. The small number of observations provided by the measurements in the Winchester and Crieff Amperion studies is not sufficient to form a basis for establishing a value for the extrapolation factor.

21. The Commission notes that even at the two installations examined in the OFCOM studies, the data describe that the electromagnetic field attenuates at different rates. In addition, the data does not even appear sufficient to determine whether the type of BPL technology and architecture made a difference in the field attenuation rate. Moreover, OFCOM itself recommends that ''[d]uring the course of future PLT leakage emission measurements, further work is undertaken to confirm this finding elsewhere. The Commission saw nothing in the studies submitted by the ARRL that would warrant selection of a different (lower value) extrapolation factor.

22. With respect to its proposal for a sliding scale extrapolation factor, the Commission observed that the ARRL did not provide an explanation as to how its formula was derived or how to

use it to determine the extrapolation factor, nor did it provide a rationale for selecting such a formula. Further, even the CISPR graph has no explanation for the data showed thereon. In addition, the Commission has no information as to the relationship between the performance of emissions from BPL technology and the specifications for reduction of power line noise adopted in the standard. Therefore, the Commission was unable to determine whether or how the sliding scale factor proposed by the ARRL could be used to represent the attenuation of emissions from a BPL system.

23. Accordingly, the extrapolation factor adopted in the *BPL Order,* and affirmed in the *BPL Reconsideration Order,* was based on the best information available at the time each of those decisions were made, while acknowledging that it might be desirable to revisit this issue if more information would become available, as we are now undertaking.

b. Review of the Extrapolation Factor

24. In reviewing the BPL extrapolation factor, the Commission intends to seek new information and studies, including those with empirical research, and to consider new approaches for the extrapolation that could use a lower value for the attenuation rate of emissions. Looking at new information, shortly after the release of the Commission's *BPL Reconsideration* Order, NTIA published its ''Phase 2 Study.'' This study illustrates the application of the Commission's BPL rules and measurement guidelines in a case study. Using the well-known and validated simulation software it employed in its Phase 1 Study, NTIA created an elaborate power line model that approximates existing overhead Access BPL power line structures in the U.S. After applying the emissions limits and methodology from the BPL measurement guidelines, NTIA analyzed the noise floor increase expected in nearby receivers as a result of BPL operations. NTIA states that its simulations confirm that ''at or above 10 MHz, the simulation results show good agreement between the rate that field strength decays and the part 15 distance extrapolation rate using the slant range distance to the Access BPL device and power lines.'' NTIA does, however, further state that ''the simulations in the 4 to 8 MHz frequency range exhibited somewhat slower rates of field strength decay with distance than would be expected by the distance extrapolation rate in the part 15 rules for Access BPL systems. This difference was up to 6 dB less than the distance extrapolation rate.

25. The Commission also observes that, like OFCOM in the United Kingdom, the regulatory agencies of other countries are testing BPL systems as part of the international forum's discussions on BPL technology. The recently released study from the Federal Republic of Brazil reports results that show attenuation of emissions from BPL that is greater than the 40 dB per decade extrapolation factor, which indicates variation on the other side of the results found in the OFCOM studies. Here again, the amount of data collected is relatively small. The Commission believes that the information in the NTIA Phase 2 and Brazil studies, when viewed in light of the NTIA's Technical Appendix and the OFCOM studies taken together not only provide validation for our previous conclusions selecting 40 dB per decade as the extrapolation factor, recognizing that there will be variation around that value at individual locations, but also inform our further consideration of this matter.

26. There may be other new studies of the attenuation of BPL emissions with distance. The Commission requests that interested parties provide additional empirical information and studies regarding the distance extrapolation factor for use in measurements of emissions from Access BPL operating below 30 MHz. Such information and studies will be most useful if they are compiled using the FCC measurement guidelines and cover various BPL technologies that operate below 30 MHz. The data should also cover the different operating frequencies of BPL emitters in their typical deployment configurations and the field strength attenuation at these frequencies. Access BPL systems from which data is collected also should be representative of power line configurations (underground and overhead) and current BPL network architectures in the United States.

27. The Commission also observes that the slant range distance in the measurement procedure works with the 40 dB per decade factor to yield extrapolated measurement values that have the effect of imposing a more conservative emissions standard than would be derived if using the horizontal distance from a power pole. In this regard, at relatively short distances, *i.e.,* distances 30 meters or less, the slant range measurement method effectively reduces the emission limit for BPL systems with respect to the horizontal distance from the pole because at any given horizontal distance from the pole, the slant range distance is longer than the horizontal distance. This is simple geometry resulting from the height of the power line on which the BPL emitter is installed. (The hypotenuse of a right triangle is longer than either of the sides.) When extrapolated values at 40 dB per decade of slant range distance are plotted against the horizontal distance, the effective slant range emission limit curve more closely follows the emission limit curve based on a 20 dB per decade extrapolation factor than the emission limit curve based on a 40 dB per decade extrapolation factor. NTIA's modeling results effectively support this observation. The Commission also notes that given that its BPL measurement procedure requires that compliance measurements be taken at 30 meters or less, the effect of the slant range distance provision is significant at all distances where the extrapolation factor can be used. The Commission seeks comment on our slant range method as it pertains to the effective field attenuation rate in a horizontal distance context and on NTIA's findings with respect to the extrapolation factor in its Phase 2 Study.

28. The Commission observes that while 40 dB per decade continues to best describe the attenuation rate of emissions from BPL systems, there is also considerable variability around that value at different sites. The result of this variability is that the actual attenuation at some sites could be less than 40 dB per decade and using the current extrapolation factor at such sites could produce an adjusted measurement that would be less than the signal that would be measured at the standard 30 meter measurement distance specified in § 15.209. The Commission requests comment on whether it would be desirable to modify the value of the BPL extrapolation factor to be 30 dB per decade or some other value. This lower value would apply a more conservative approach that would compensate for those cases where the actual attenuation is less than 40 dB. While the Commission does not have statistics that indicate the distribution of cases where the attenuation rate is less than 40 dB per decade, it believes that the additional margin provided by a 30 dB standard would encompass a large number of such cases. A 30 dB standard would also substantially reduce the remaining differences in under-adjustment of measurements at locations where the attenuation rate might be less than 30 dB per decade. The Commission further notes that extrapolated emission limits based on our proposed 30 dB extrapolation factor

when applied to slant distance are comparable to the extrapolated emission limits based on a 20 dB extrapolation factor applied to horizontal distance.

29. The Commission recognizes that reliance on a 30 dB per decade extrapolation factor could increase the compliance burden for BPL equipment and systems that are tested at locations where the attenuation rate is in fact greater than 40 dB per decade. The Commission, therefore clarifies that in all cases measurements of BPL equipment and systems may be made at the 30 meters distance specified in § 15.209 and that where possible, the Commission's staff will make measurements at this distance when testing for compliance. Further, to provide manufacturers and system operators the opportunity to use a higher extrapolation rate at locations where they believe the attenuation rate is higher than 30 dB per decade, the Commission is also considering allowing parties testing BPL systems for compliance with the radiated emissions limits to determine distance correction factors on a site-by-site basis using an *in situ* measurements procedure. The site-specific extrapolation factor would be an alternative to the proposed 30 dB per decade standard and would replace the existing alternative method currently in the rules but that is not included in the BPL measurement procedures. This alternative method would only be applicable to Access BPL devices operating on overhead power lines on frequencies below 30 MHz.

30. The Commission requests comment on the suitability of an extrapolation factor lower than 40 dB per decade and the *in situ* procedure for determining the field strength of BPL emissions in locations where measurements cannot be made at the lateral distance of 10 meters from the overhead line. Interested parties are invited to suggest alternative values for the extrapolation factor that would account for the variability of attenuation rates without unfairly burdening manufacturers of users of BPL equipment and systems. Parties submitting such suggestions should also provide information to support their proposal. Interested parties are specifically requested to address (1) whether use of the proposed procedure would provide an appropriate and reliable means of accounting for any variation in the attenuation rate at individual sites; (2) the effect that an extrapolation factor lower than 40 dB per decade would have on the effective emission limits for Access BPL devices operating on overhead power lines when used in conjunction with our slant range method; and (3) any special provisions that may be necessary to ensure that site-specific attenuation rates derived through this procedure reliably and fairly represent the attenuation rate at individual sites.

Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980 as amended,[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (''FNPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the FNPRM. The Commission will send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

A. Need for, and Objectives of, the Proposed Rules

32. Consistent with the opportunity provided by the court's remand and the Commission's stated intention in the *BPL Order* to review the decision on the extrapolation factor if new information becomes available, the Commission is re-examining the current extrapolation factor in light of the recently issued technical studies addressing the attenuation of BPL emissions with distance and efforts by the IEEE to develop BPL measurement standards. As the several studies now available show and as the Commission has observed previously, there can be considerable variability in the attenuation of emissions from BPL systems across individual measurement sites that is not captured in the existing fixed 40 dB per decade standard.

33. The Commission proposes to amend part 15 of our rules to adjust the extrapolation factor downward to 30 dB for Access Broadband over Power Line (BPL) systems and, as an alternative, also allow use of a special procedure for determining site-specific BPL extrapolation values using *in situ* measurements. Specifically, as a means to address the concerns that the rate of attenuation of BPL emissions at a specific site can differ from the existing 40 dB per decade standard, the Commission proposes to modify its rules and measurement procedures for Access BPL to specify the use of a 30 dB extrapolation factor and to allow parties testing BPL systems for compliance with the radiated emissions limits to determine distance correction factors on a site-by-site basis using an in situ measurements procedure when measurements cannot be made at the measurement distance of 30 meters as specified in the rules. In addition, the Commission is clarifying that parties testing BPL equipment and systems for compliance with emissions limits in the Commission rules may measure at the standard 30 meter distance rather than only the shorter distances recommended in the BPL measurement guidelines. The Commission's actions will ensure that the BPL measurement rules would not unnecessarily burden this technology while providing appropriate protection from harmful interference for authorized services.

B. Legal Basis

34. This action is taken pursuant to Sections 1, 4, 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4, 301, 302, 303(e), 303(f) and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

35. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets many additional criteria established by the Small Business Administration (SBA).[5]

36. Nationwide, there are a total of approximately 27.2 million small businesses, according to the SBA.[6] A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[7] Nationwide, as of 2002, there were approximately 1.6 million small

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996)(''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

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

[3] *See* U.S.C. 603(b)(3).

[4] *Id.* 601(3).

[5] *Id.* 632.

[6] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *http://web.sba.gov/faqs* (accessed Jan. 2009).

[7] 5 U.S.C. 601(4).

organizations.[8] The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[9] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[10] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.''[11] Thus, we estimate that most governmental jurisdictions are small.

37. The proposed rules pertain to manufacturers of unlicensed communications devices. The appropriate small business size standard is that which the SBA has established for radio and television broadcasting and wireless communications equipment manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.''[12] The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.[13] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[14] Of this total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999.[15] Thus, under this size standard, the majority of firms can be considered small. The Commission does not believe this action would have a negative impact on small entities that manufacture unlicensed BPL devices. Indeed, it believes the actions should benefit small entities because it should make available increased business opportunities to small entities. The Commission request comment on these assessments.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

38. The FNPRM does not contain proposed new or modified information collection requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[16]

40. In this FNPRM, the Commission proposed to modify its rules and measurement procedures for Access BPL to specify the use of a 30 dB extrapolation factor and, as an alternative, to allow parties testing BPL systems for compliance with the radiated emissions limits to determine distance correction factors on a site-by-site basis using an *in situ* measurements procedure when measurements cannot be made at the measurement distance of 30 meters as specified in the rules. In addition, the Commission clarifies that parties testing BPL equipment and systems for compliance with emissions limits in the rules may measure at the standard 30 meter distance rather than only the shorter distances recommended in the BPL measurement guidelines. The Commission seeks comment on the alternatives and the clarification.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

41. None.

Ordering Clauses

42. Pursuant to Sections 1, 4, 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4, 301, 302, 303(e), 303(f) and 303(r), the Request for Comment and Further Notice of Proposed Rule Making is hereby adopted.

43. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Request for Comment and Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 15 to read as follows:

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. In § 15.31 redesignate paragraphs (f)(3) through (f)(5) as (f)(4) through (f)(6), and add a new paragraph (f)(3) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(f) * * *

(3) For Access BPL devices operating at frequencies below 30 MHz, the results shall be extrapolated to the specified distance by using an extrapolation factor of 30 dB/decade. Measurements may be performed at a distance closer than that specified with the radiated emissions limit in § 15.209 of this part; however, an attempt should be made to avoid making measurements in the near field. The distance correction to the emission limit for measurements on overhead power line installations shall be based

[8] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[9] 5 U.S.C. 601(5).

[10] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[11] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[12] U.S. Census Bureau, 2007 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/naics/2007/def/ND334220.HTM#N334220.*

[13] 13 CFR 121.201, NAICS code 334220.

[14] U.S. Census Bureau, American Fact Finder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); *http://factfinder.census.gov.* The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

[15] *Id.* An additional 18 establishments had employment of 1,000 or more.

[16] 5 U.S.C. 603(c).

on the slant range distance, which is the line-of-sight distance from the measurement antenna to the overhead line. Alternatively, a site-specific extrapolation factor may be used in lieu of the 30 dB/decade standard. This extrapolation factor shall be derived from a best fit straight line fit determined by a first-order regression calculation from measurements for at least four lateral distances from the overhead line. Compliance measurements for Access BPL and use of site-specific extrapolation factors shall be made in accordance with the Guidelines for Access BPL systems specified by the Commission.

* * * * *

[FR Doc. E9–20336 Filed 8–21–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 17, 22, 36, and 52

[FAR Case 2009–005; Docket 2009–0024; Sequence 2]

RIN 9000–AL31

Federal Acquisition Regulation; FAR Case 2009–005, Use of Project Labor Agreements for Federal Construction Projects

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13502, Use of Project Labor Agreements for Federal Construction Projects. The comment period is being reopened for an additional 30 days to provide additional time for interested parties to review the proposed FAR changes.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before September 23, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2009–005 by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–005'' into the field ''Keyword''. Select the link that corresponds with FAR Case 2009–005. Follow the instructions provided to submit your comments. Please include your name, company name (if any), and ''FAR Case 2009–005'' on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2009–005 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2009–005.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 74 FR 33953, July 14, 2009. The comment period is being reopened for an additional 30 days to provide additional time for interested parties to review the proposed FAR changes.

Dated: August 18, 2009

Edward Loeb,

Deputy Director, Acquisition Policy Division.

[FR Doc. E9–20305 Filed 8–21–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0150]

Federal Motor Vehicle Safety Standard No. 108; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document responds to a petition for rulemaking regarding the Federal motor vehicle safety standard for lighting. The Groupe de Travail ''Bruxelles 1952'' (GTB) and the Society of Automotive Engineers (SAE) Lighting Committee requested that new specifications be added for optional lower beam and upper beam headlamp patterns on the basis they would increase harmonization with European requirements. After completing a technical review of the petition, NHTSA is denying this petition. The agency notes the petitioners did not provide data to demonstrate that the requested new optional specifications would provide safety benefits comparable to those of the existing standard or that cost savings would be realized without compromising safety. Additionally, NHTSA is pursuing a more comprehensive review of the lighting standard and is currently studying the feasibility of many issues and potential regulatory changes, some of which would address issues raised in this petition.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. David Hines, Office of Crash Avoidance Standards (Phone: 202–493–0245; FAX: 202–366–7002).

For legal issues, you may call Mr. Ari Scott, Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. The Petition
II. Agency Technical Evaluation
III. Agency Conclusions

I. The Petition

On July 21, 2004, the SAE Lighting Committee and GTB petitioned the agency to add new specifications to Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment*, for optional upper and lower beam patterns based on specifications pending approval by the United Nations' Economic Commission for Europe (ECE) under ECE R112. If these requested amendments were adopted, manufacturers of vehicles sold in the U.S. would be able to choose to certify products to either the existing requirements of FMVSS No. 108 or the requested alternative new requirements. Modifications to the agency's test procedures were also requested. The petitioners stated that Japan had

adopted some of the requested lower beam headlamp test points into its national regulation and that approval was pending to incorporate changes into ECE R112.

The primary elements of the requested new option for FMVSS No. 108 included:

(1) Lower beam headlamp pattern: The petitioners stated that the core of the pattern was based upon 4 critical test points, three of which address main forward seeing light and one establishing a glare limit. Additional test points were added, along with lines and zones. Some test points that are currently regulated under FMVSS No. 108 would be eliminated.

(2) Upper beam headlamp pattern: The petitioners stated that the primary change was increasing the current maximum intensity from 75,000 candela at test point H–V to 140,000 candela anywhere in the pattern. In addition, several downward test points with minimum specified intensities would be eliminated.

(3) Test procedures: The petitioners stated that ECE currently performs photometric tests with an ''accurate rated light source'' that provides a reference luminous flux at 12.0 volts and this is similar to the FMVSS No. 108 test procedure for signaling lamps, except that approximately 12.8 volts is used. However, for FMVSS No. 108's headlamp photometry test requirements, manufacturers must certify that headlamps meet specified requirements using any compliant, replaceable light source of the type intended for use in the system. In addition, the petitioners stated that efforts were underway to obtain agreement on a common worldwide test voltage.

In support of their request, the petitioners cited long-running efforts to establish the preferred harmonized beam patterns and the approach utilized to consider the most relevant factors for drivers' visual performance. The petitioners stated that because driving environments are different between the United States, Europe, and Japan, drivers' needs may vary but, core principles, such as adequate roadway illumination while controlling glare, are consistent. For example, in the United States sign illumination is an important function of headlamps so applicable photometric minimums exist for test points in the lower beam pattern while these test points do not exist in the ECE pattern, which is more focused on preventing glare to oncoming drivers. The stated goal of the requested optional beam patterns would be to balance the needs of drivers in different parts of the world and establish a workable middle ground.

The petitioners stated that the optional beam patterns could provide the following benefits to consumers and industry:

Consumer benefits: (1) Glare may be reduced because the most relevant maximum intensity is reduced from 1,000 cd to 500 cd; (2) For lower beams, minimum requirements for sign lighting are increased over current levels; (3) For upper beams, object detection and curve following will be improved due to the expanded width of the pattern; (4) For upper beam, seeing distance will be improved by 5–10% due to the increase in maximum intensity; and (5) Globalized headlamps present the potential for reducing consumer costs.

Industry benefits: (1) Cost savings on design, engineering, testing, and tooling costs because the same lamp can be used for multiple markets; (2) Potentially quicker expansion into new markets due to reduced trade barriers; (3) Reduced inventory because of reduced market variants; and (4) Potential savings due to stocking only one lamp for multiple markets rather than multiple lamps for multiple markets.

II. Agency Technical Evaluation

NHTSA reviewed the requested changes made by the petitioners and analyzed the impact they would have on FMVSS No. 108. During our evaluation of the petition, the agency noted several concerns regarding different provisions, as well as an absence of supporting data which might have assisted in addressing such concerns.

Regarding the requested optional set of 4 new lower beam test points, the agency is particularly concerned with the request to replace the existing test point at 1.5D–2R [1] with a new test point, characterized as emphasizing placement of the high intensity part of the beam further down the road, at 0.6D–1.3R. This requested test point would have a specified minimum intensity of 10,000 candela and no maximum, compared to the current test point's specified minimum intensity of 15,000 candela and no maximum. While FMVSS No. 108 does not specify that headlamps be aimed within a certain tolerance at the time of sale, an industry recommended practice, SAE J 599c *Lighting Inspection Code,* specifies a tolerance of +/− 0.76 degrees. Because 1.5 degrees is well outside, and 0.6 degrees is within, this stated allowable tolerance, the agency is concerned about the impact the requested change could have on real world glare levels. NHTSA believes an unintended consequence of this requested change could be that vehicles certified to the new option could have headlamps with a level of mis-aim such that high intensities of light are placed above the horizontal, resulting in unacceptable levels of glare to other motorists. The potential effects of this change were not addressed by the petitoners.

The agency also considered the other cited potential benefits of the new lower beam option, such as sign lighting improvements. We believe the cited potential benefits likely would not provide measurable safety benefits in the United States. For sign lighting, the agency notes that while the requested lower beam photometry table contains 3 additional points with specified minimum intensities, 135 cd at 2U–V and 2U–4R and 64 cd at 4U–V (which we believe many headlamps may already meet without the points being specified), it would permit combining the output from parking lamps to meet the lower beam headlamp photometry requirements. We believe this may actually result in a reduction in real world lower beam headlamp performance at the existing test points related to sign lighting.

The agency does believe there may be value in adopting the new photometry zone requirements as contained in the requested lower beam pattern. Our current lower beam photometry requirements are mostly unchanged since their adoption several decades ago and are therefore based on a technology (sealed beam headlamps) that has since greatly evolved. Given changes in technology, the agency believes there may be value in revisiting this issue. For example, the original photometry requirements were such that by specifying certain points, the performance between those points was predictable due to the headlamp designs prevalent then. However, this may not be true today as a variety of headlamp optics can be designed to produce significantly different beam patterns. Adopting zones to better characterize the intended performance of today's headlamps is an issue of interest to the agency as it may be helpful in reducing glare, often from unregulated test zones, which may not have been as prevalent when FMVSS No. 108 was first adopted.

The primary change requested by the petitioners for upper beam photometry was to almost double the current maximum intensity value of 75,000 candela at test point H–V to 140,000

[1] In our photometry test point specifications, D means down and R means right (in addition, L means left, U means up, H means horizontal and V means vertical).

candela anywhere in the beam pattern. The petitioners stated that this request was based on UMTRI Report No. UMTRI–2000–41, ''Relative Merits of the U.S. and ECE High-Beam Maximum Intensities and of Two- and Four-Headlamp Systems'' but the agency notes this research did not evaluate upper beams with the requested 140,000 candela value. Instead, it evaluated intensities between the existing and newly requested maximum values. Due to the diminishing returns of increasing upper beam intensity, the petitioners cited a 5–10% improvement in seeing distance (due to the almost 87% increase in the maximum value from 75,000 to 140,000 candela). However, the petitioners did not quantify how this might affect safety benefits, and in particular whether any improvements would outweigh any associated disbenefits associated with potential increases in glare due to higher intensity upper beam headlamps.

With regard to the requested test procedures for this option, which would require testing with ''accurate rated light sources,'' this would be a significant departure from the current approach of specifying requirements using any compliant, replaceable light source of the type intended for use in the system and could, in the agency's opinion, have a negative impact on safety. The agency believes that requiring headlamps to meet specified requirements with production light sources is the best approach because it ensures consumers will obtain the specified performance with the products they purchase, i.e., it requires manufacturers to take into account typical production tolerances and variation in light sources. Modifying the standard to instead specify requirements utilizing testing with ''accurate rated light sources,'' which do not represent normal production variation, would mean that the performance might not be obtained in the real world. Absent additional changes to ensure that typical production variation was accounted for in the test requirements, the agency believes that the requested change could lead to reduced headlamp performance. The petitioners did not provide any evidence this would not occur.

Regarding the other potential industry benefits cited by the petitioners, the agency notes that no data were submitted to quantify associated cost impacts on consumers. Similarly, the petitioners did not quantify the amount of cost savings related to reduced inventory levels, potentially quicker expansion into new markets due to reduced trade barriers, and less complexity in stocking replacement lamps for multiple markets. We note that the pending approval of the requested changes into ECE R112 cited by the petitioners as anticipated for fall 2004 still has not occurred.

IV. Agency Conclusion

NHTSA notes that while adding a new option would provide some additional flexibility for manufacturers in terms of being able to choose a new beam pattern, we are concerned that there may be a negative impact on safety associated with increased glare levels if the agency were to allow the newly requested lower beam photometry test points and higher intensity upper beam headlamps. The petitioners did not provide sufficient data to demonstrate otherwise or sufficient data to show there would be cost savings to consumers and manufacturers at comparable safety levels. Therefore, NHTSA is denying the petition. However, the agency is separately pursuing a more comprehensive effort to evaluate possible modifications to FMVSS No. 108, with the primary goal being to translate, to the extent possible, the existing provisions (along with their associated underlying assumptions) into performance-oriented terms independent of technology. We anticipate this thorough evaluation will take some time, but in the process, the agency will consider harmonization opportunities and, based upon the results, the agency anticipates it may then be in a position to consider proposing regulatory action to modify our lighting standard.

Issued on: August 18, 2009.

Julie Abraham,

Director, Office of International Policy, Fuel Economy and Consumer Programs.

[FR Doc. E9–20258 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0908131233–91234–01]

RIN 0648–XQ14

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; 2009–10 Main Hawaiian Islands Bottomfish Total Allowable Catch

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

ACTION: Proposed specification; request for comments.

SUMMARY: NMFS proposes to specify establish a total allowable catch (TAC) for the 2009–10 fishing year of 254,050 lb (115,235 kg) of Deep 7 bottomfish in the main Hawaiian Islands (MHI). The TAC would be set in accordance with regulations established to support long-term sustainability of Hawaii bottomfish in the Hawaiian Archipelago.

DATES: Comments must be received by September 8, 2009.

ADDRESSES: Comments on this proposed specification, identified by 0648–XQ14, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*; or
- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (if you wish to remain anonymous, enter ''NA'' in the required name and organization fields). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish FMP) and the related Environmental Impact Statement are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org*.

An environmental assessment (EA) was prepared that describes the impact on the human environment that would result from this proposed action. This action, specification of a TAC, is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations and therefore a Regulatory Impact Review was not prepared. Based on the environmental impact analyses presented in the EA, NMFS prepared a finding of no significant impact (FONSI) for the

proposed action. Copies of the EA and FONSI are available from *www.regulations.gov*, or the Council (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is available at *www.gpoaccess.gov/fr*.

The bottomfish fishery in Federal waters around Hawaii is managed under the Bottomfish FMP, developed by the Council and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). Regulations governing bottomfish fishing by U.S. vessels in accordance with the Bottomfish FMP appear at 50 CFR part 665 and subpart H of 50 CFR part 600. Currently, bottomfish stocks in the Hawaiian Archipelago are not experiencing overfishing, and efforts to minimize localized stock depletion in the MHI Management Subarea are precautionary. The MHI Management Subarea refers to the portion of the U.S. Exclusive Economic Zone around the Hawaiian Archipelago lying to the east of 161° 20' long.

Pursuant to regulations at § 665.72, NMFS must is directed to specify a TAC limit for Deep 7 bottomfish in the MHI for the fishing year, based on a recommendation from the Council, considering the best available scientific, commercial, and other information, and taking into account the associated risk of overfishing. The Deep 7 bottomfish are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*).

When the TAC for the year is projected to be reached, NMFS will close the non-commercial and commercial fisheries until the end of the fishing year (August 31). During a fishery closure for Deep 7 bottomfish, no person may fish for, possess, or sell any of these fish in the MHI, except as otherwise authorized by law. Specifically, fishing for, and the resultant possession or sale of, Deep 7 bottomfish by vessels legally registered to Mau Zone, Ho'omalu Zone, or Pacific Remote Island Areas bottomfish fishing permits, and conducted in compliance with all other laws and regulations, are not affected by the closure. There is no prohibition on fishing for or selling other non-Deep 7 bottomfish species throughout the year.

For the Last year (2008–09 fishing year), the TAC was of 241,000 lb (109,316 kg) of Deep–7 bottomfish in the MHI (74 FR 6998; February 12, 2009). Monitoring of the commercial fishery indicated that the TAC for the 2008–09 fishing year was projected to be reached by on or before July 6, 2009, and, in accordance with the regulations at § 665.72, NMFS published a temporary rule closing the non-commercial and commercial MHI bottomfish fisheries on July 6, 2009 (74 FR 27253; June 9, 2009). The fishery is scheduled to re-open on September 1, 2009.

At its 145th meeting in Kailua-Kona, Hawaii, held July 20–25, 2009, the Council reviewed a background document and an preliminary initial EA that which incorporated data from an updated March 2009 bottomfish stock assessment published by NMFS Pacific Islands Fisheries Science Center (PIFSC). These documents were available at the Council's 145th meeting. After considering the information in the initial EA, risks of overfishing, and recommendations from the Council's Science and Statistical Committee, and input from the public, the Council recommended a TAC of 254,050 lb (115,235 kg) of MHI Deep 7 bottomfish for the 2009–2010 fishing year.Language from FONSI inserted here (Subject to Change):

Based on the updated March 2009 bottomfish stock assessment prepared by NMFS PIFSC, the proposed 2009–10 TAC is associated with a zero percent risk of overfishing of Hawaiian archipelagic bottomfish stocks, ; and between 39- and 44 percent risk of localized depletion (or excess fishing mortality) of the MHI management subarea bottomfish stocks. These risk values are similar to those estimated by PIFSC for the 2008 - 2009 fishing year (i.e., zero and 40 percent, respectively)(74 FR 6998; February 12, 2009).

NMFS will consider the Council's recommendation, potential environmental and economic affects of the proposed TAC, and comments received during the public comment period for this proposed specification, and will announce the final TAC specification in the **Federal Register**. To be considered, comments on this proposed specification must be received by September 8, 2009, not postmarked or otherwise transmitted by that date.

Regardless of the final TAC specification, all other management measures will continue to apply in the MHI bottomfish fishery. The MHI bottomfish fishery is scheduled to re-open on September 1, 2009, and will continue until August 31, 2010, unless the fishery is closed prior to August 31 as a result of the TAC being reached.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the Bottomfish FMP, other provisions of the Magnuson- Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Language from SBA Letter (Drafted by M. Razin):A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. There are approximately 380 vessels engaged in the commercial harvest of MHI bottomfish. Average gross receipts per vessel for the 2008–2009 fishery was $3,577.00, based on a price of $5.64 per lb and a harvest of the 2008–2009 TAC specification of 241,000 lb. In general, the relative importance of MHI bottomfish to commercial participants as a percentage of overall fishing (or household) income is unknown, as the total suite of fishing (or other income-generating) activities undertaken by individual operations across the year has not been examined, to date. The majority of the 380 vessels comprising the affected universe were under 30 ft (9.1 m) in length overall.

Based on all available information, NMFS has determined that all vessels in the current fishery are small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $4 million. Therefore, there are no disproportionate economic impacts between large and small entities. Furthermore, there are no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length. Assuming an average price of $ 5.64 per lb, the proposed TAC specification of 254,050 lbs (115,235 kg) is expected to yield $1,432,842.00 in total revenue, or an average of $3,770.00 in revenue per vessel, compared to $3,577.00 per vessel for the 2008–2009 fishery. This is resulting in an expected five 5 percent increase in revenue per vessel from implementing the proposed specification. Even though there would be a substantial number of vessels, i.e., 100 percent of the bottomfish fleet, affected by this specification, there would be no significantly adverse economic impact to individual

vessels resulting from the implementation of this specification. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), NMFS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866 because this action contains no implementing regulations.

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

Dated: August 19, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–20327 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 162

Monday, August 24, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0098]

Notice of Availability of Biotechnology Quality Management System Pilot Project Draft Audit Standard

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: We are reopening the comment period on the draft audit standard developed by the Animal and Plant Health Inspection Service for its Biotechnology Quality Management System pilot project. This action will allow interested persons additional time to prepare and submit comments. The Biotechnology Quality Management System is a voluntary compliance assistance program designed to help stakeholders develop sound management practices, thus enhancing compliance with the regulatory requirements for environmental releases and movements of regulated articles in accordance with 7 CFR part 340.

DATES: We will consider all comments that we receive on or before October 23, 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-2008-0098* 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–2008–0098, 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–2008–0098.

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: Dr. Edward Jhee, Biotechnology Quality Management System Program Manager, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 91, Riverdale, MD 20737–1236; (301) 734–6356, *edward.m.jhee@aphis.usda.gov.* To obtain copies of the draft audit standard, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.* The draft audit standard is also available on the Internet at *http://www.aphis.usda.gov/biotechnology/news_bqms.shtml.*

SUPPLEMENTARY INFORMATION: On June 4, 2009, APHIS published a notice in the **Federal Register** (74 FR 26831–26832, Docket No. APHIS–2008–0098) announcing the availability of the Biotechnology Quality Management System (BQMS) draft audit standard. Comments on the BQMS draft audit standard were to have been received on or before August 3, 2009. We are reopening the comment period on Docket No. APHIS–2008–0098 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between August 4, 2009, and the date of this notice.

Upon conclusion of the BQMS pilot project, APHIS will consider all comments received during the comment period to revise the draft audit standard to improve the efficacy of this project. This feedback, as well as comments from the pilot participants on the pilot BQMS project, will be used to inform the development of a BQMS audit standard and any future BQMS initiative. The BQMS draft audit standard is available for public review, and copies of this document are available as indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Done in Washington, DC, this 18th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–20294 Filed 8–21–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

RIN 0572–ZA01

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

RIN 0660–ZA28

Broadband Initiatives Program; Broadband Technology Opportunities Program

AGENCIES: Rural Utilities Service (RUS), Department of Agriculture, and National Telecommunications and Information Administration (NTIA), Department of Commerce.

ACTION: Notice of funds availability; method of acceptance of supplemental attachments.

SUMMARY: RUS and NTIA announce additional measures to ensure that any pending electronic applications experiencing difficulties uploading attachments into the Easygrants® System for the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP) can be submitted by the extended application deadline of August 20, 2009. The Easygrants® System will not accept applications after 5 p.m. Eastern Time (ET) on August 20, 2009. In order to ensure that all pending electronic applications experiencing difficulties uploading attachments can be completed, the core application must be electronically submitted using the Easygrants® System by 5 p.m. ET on August 20, 2009. The extension described herein pertains only to the attachments listed in the ''Uploads Checklist'' of the ''Uploads'' page of the Easygrants® System, including documents submitted as

Supplemental Information. The core application is defined as all fields and questions in the application, not including the attachments listed in the ''Uploads Checklist'' of the ''Uploads'' page. Any attachments that the applicant is unable to upload to the Easygrants® System must be submitted by August 24, 2009, using one of the following methods of delivery: hand-delivery, overnight express, or regular mail.

DATES: For both hand and mail deliveries, the attachments for both BIP and BTOP applications must be submitted on an appropriate electronic medium, such as a DVD, CD–ROM, or flash drive, and in the same document format and type as used for that respective attachment in the Easygrants® System (*e.g.,* .doc, .xls, .pdf) and postmarked no later than August 24, 2009, or hand-delivered no later than 5 p.m. ET on August 24, 2009, to the address listed below. Electronic mail and facsimile machine submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding BIP, contact David J. Villano, Assistant Administrator Telecommunications Program, Rural Utilities Service, e-mail: *bip@wdc.usda.gov,* telephone: (202) 690–0525. For general inquiries regarding BTOP, contact Anthony Wilhelm, Deputy Associate Administrator, Infrastructure Division, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, e-mail: *btop@ntia.doc.gov,* telephone: (202) 482–2048.

SUPPLEMENTARY INFORMATION: On July 9, 2009, RUS and NTIA published a Notice of Funds Availability (NOFA) and Solicitation of Applications in the **Federal Register** announcing general policy and application procedures for the BIP and BTOP programs. 74 FR 33104 (2009). In the NOFA, RUS and NTIA encouraged all applicants to submit their applications electronically and required that certain applications be filed electronically through an online application system at *http://www.broadbandusa.gov.* 74 FR at 33118. RUS and NTIA established an application window for these grant programs from July 14, 2009, at 8 a.m. ET through August 14, 2009, at 5 p.m. ET (application closing deadline).

On August 13, 2009, the agencies extended the application deadline for BIP and BTOP until 5 p.m. ET on August 20, 2009, for those applicants that had an application pending in the Easygrants® System as of the original application closing deadline, August 14, 2009. The temporary extension allowed the agencies to review the electronic intake system and make improvements wherever possible to address the large volume of activity from potential applicants. In particular, the agencies added servers, increased the efficiency of the servers, and made software changes. While these efforts have greatly improved the filing experience for the applicants, the agencies believe it is prudent and reasonable to provide additional flexibility for meeting the application deadline. The agencies are committed to making the application process fair and user-friendly for the public. The agencies are therefore taking additional action, out of an abundance of caution, to ensure that all pending electronic applications can be submitted in a timely manner.

By this Notice, RUS and NTIA remind applicants that applications are due by 5 p.m. ET on August 20, 2009. After 5 p.m. ET on August 20, 2009, applicants will no longer be able to submit applications through the Easygrants® System. Any information provided through the system, including attachments that have been uploaded, will be final by that time and not subject to revision or amendment by the applicants.[1]

To the extent that any applicant has been unable to upload any of the attachments to its application by the August 20th, 5 p.m. deadline, the applicant may submit the application without those attachments it is having difficulty uploading, effective as of the posting of this Notice. The agencies will permit the applicant a limited extension to submit the attachments it was unable to upload by hand-delivery, overnight express, or by regular mail, as outlined below, provided that the applicant has already submitted its core application in a timely fashion. All applicants still must submit the required portions of the core application electronically using the Easygrants® System by 5 p.m. ET on August 20, 2009. The extension described herein pertains only to the attachments listed in the ''Uploads Checklist'' of the ''Uploads'' page of the Easygrants® System, including documents submitted as Supplemental Information. The core application, which must be filed no later than 5 p.m. ET on August 20, 2009, is defined as all fields and questions in the application, not including the attachments listed in the ''Uploads Checklist'' of the ''Uploads'' page.

As currently configured, the Easygrants® System does not permit the submission of applications that are missing required attachments. In order to accommodate alternative methods for the submission of attachments, the Easygrants® System will be reconfigured, effective 9 a.m. ET on August 20th, to allow the submission of an application without required attachments. Thus, applicants will have the ability to submit their core application through the Easygrants® System by 5 p.m. ET on August 20, 2009 and subsequently submit any attachments that were not successfully uploaded by August 24, 2009, as described herein. It is emphasized, however, that every applicant should make every effort to submit its complete application, including attachments, through the Easygrants® System if it can prior to availing itself of this option.

RUS and NTIA strongly encourage the applicants to send an e-mail by midnight ET on August 20th to *helpdesk@broadbandusa.gov* indicating their intent to submit their attachments via alternate means. This notice will enable the agencies to better track and prepare for the submissions. The e-mail should contain the following information: (1) The Easygrants® ID number;[2] (2) a contact name and telephone number; (3) the agency to receive the application (BIP, BTOP, or BIP/BTOP) (4) the type of project (Infrastructure, Public Computer Center, or Sustainable Broadband Adoption), (5) the list of attachment(s) that could not be uploaded into the Easygrants® System. Applicants should not send any attachments with this e-mail.

Submission: The applicant must submit for each application:

1. A letter containing the following information: (1) The Easygrants® ID number; (2) a contact name and telephone number; (3) e-mail address; (4) the agency to receive the application (BIP, BTOP, or BIP/BTOP) (5) the type of project (Infrastructure, Public Computer Center, or Sustainable Broadband Adoption), (6) the list of attachment(s) that could not be uploaded into the Easygrants® System.

2. The attachments the applicant was unable to upload on the Easygrants® System on an appropriate electronic

[1] Note that applicants may still view this information by logging into Easygrants® and clicking the application link on their homepage. This links to the application's Main page, which will display a listing of all submitted attachments and links to the original and PDF-converted documents so that they can be viewed, downloaded, or printed. Applicants may also view, download, and print a PDF copy of their core application and any submitted attachments from this page.

[2] The Easygrants® ID number is generated once the application is started and is visible as a header in the pdf document.

medium, such as a DVD, CD–ROM or flash drive, and in the same document format and type as used for that respective attachment in the Easygrants® System (*e.g.,* .doc, .xls, .pdf). Each file on the DVD, CD–ROM, or flash drive must be labeled in the following format: [Easygrants ID]_[Upload Number]_[Attachment Name] (*e.g.,* 424_13_Q40_ Attachment F_ Legal Opinion); [3]

3. A letter signed by an authorized representative of the applicant certifying that he or she is authorized to submit the attachments on behalf of the applicant and that all attachments are true and correct to the best of his or her knowledge, information and belief; and

4. A printout of the Easygrants® application Main page, which will list all of the documents that were submitted with the application by 5 p.m. ET on August 20, 2009.

One of the following methods of delivery must be used: hand-delivery, overnight express or regular mail. Applicants are encouraged, but not required, to use overnight express services. Applicants choosing to submit their attachments via an electronic medium may only submit the attachments that were not already loaded successfully. Mailed submissions must be postmarked no later August 24, 2009. Hand-delivered submissions must be delivered by 5 p.m. ET on August 24, 2009. The NOFA sets forth the proof of mailing requirements. Electronic mail and facsimile machine submissions will not be accepted. Note that RUS and NTIA may require the applicant to resubmit attachments if they have any technical or other issues accessing or identifying the data contained in the applicant's electronic medium and such resubmission will not be considered a material revision to the application.

All Attachments must be sent to: Broadband USA, 5301 Shawnee Road, Alexandria, VA 22312.

All media received will not be returned to the applicant.

Dated: August 19, 2009.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information, National Telecommunications and Information Administration.

[FR Doc. E9–20372 Filed 8–20–09; 11:15 am]

BILLING CODE 3510–60–P

[3] The Upload Number can be found in the ''Uploads Checklist'' of the ''Uploads'' page. It is the first number that appears on the left in the first column. The Attachment Name appears after the Upload Number.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Permit Family of Forms.

OMB Control Number: 0648–0206.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 644.

Average Hours per Response: Federal Fisheries Permits and Federal Processor Permits, 21 minutes; Exempted Fisheries Permits, 20 hours.

Burden Hours: 304.

Needs and Uses: As part of Fishery Management Plans developed under the authority of the Magnuson-Stevenson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, this collection of information is used to monitor and manage participation in groundfish fisheries by National Marine Fisheries Service (NMFS), Alaska Region, and consists of the following permits: Federal Fisheries Permit, Federal Processor Permit, and Exempted Fishing Permit. The permit information provides: harvest gear types; descriptions of vessels, shoreside processors, and stationary floating processors; and expected fishery activity levels. Identification of the participants and expected activity levels are needed to measure the consequences of management controls, and is an effective tool in the enforcement of other fishery regulations.

Affected Public: Business or other for-profit organizations.

Frequency: Every three years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: August 19, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–20263 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2008 Panel of the Survey of Income & Program Participation, Wave 5 Topical Modules.

Form Number(s): SIPP–28505(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP28003 Reminder Card.

OMB Control Number: 0607–0944.

Type of Request: Revision of a currently approved collection.

Burden Hours: 143,303.

Number of Respondents: 94,500.

Average Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 5 interview for the 2008 Panel of the Survey of Income and Program Participation (SIPP). The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0944.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is

supplemented with questions designed to answer specific needs, such as estimating eligibility for government programs, examining pension and health care coverage, and analyzing individual net worth. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 2008 Panel Wave 5 are as follows: Annual Income and Retirement Accounts; Taxes; Child Care; and Work Schedule. These topical modules were previously conducted in the SIPP 2004 Panel Wave 4 instrument. Wave 5 interviews will be conducted from January 1, 2010 through April 30, 2010.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of approximately 3 to 4 years. The 2008 Panel is scheduled for four years and four months and includes thirteen waves which began September 1, 2008. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of thirteen times (thirteen waves), at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit (PSU) will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these people move, they are not followed unless they happen to move along with a Wave 1 sample individual.

The OMB has established an Interagency Advisory Committee to provide guidance for the content and procedures for the SIPP. Interagency subcommittees were set up to recommend specific areas of inquiries for supplemental questions.

The Census Bureau developed the 2008 Panel Wave 3 topical modules through consultation with the SIPP OMB Interagency Subcommittee. The questions for the topical modules address major policy and program concerns as stated by this subcommittee and the SIPP Interagency Advisory Committee.

Data provided by the SIPP are being used by economic policymakers, the Congress, State and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

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

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: August 18, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–20148 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Boundary and Annexation Survey, Boundary Validation Program

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before October 23, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Laura Waggoner, U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD 20233 (or via the Internet at *Laura.L.Waggoner@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau requests a revision to the Paperwork Reduction Act clearance for the Boundary and Annexation Survey (BAS) in order to conduct the Boundary Validation Program (BVP). The BVP for the 2010 Decennial Census will be administered in parallel with the 2010 BAS. The intent of this program is to provide each highest elected or appointed official (HEO) an opportunity to review the Census Bureau's boundary information for the legal entities included in the BAS. The 2010 BVP will include all actively functioning counties or statistically equivalent entities, incorporated places (including consolidated cities), minor civil divisions (MCDs), all federally recognized American Indian reservations (AIRs) and off-reservation trust land entities in the United States, and municipios, barrios and subbarrios in Puerto Rico. In addition, the Census Bureau will send a letter to the governor of each state explaining the 2010 BVP process and advising them that state boundaries will be reviewed in conjunction with relevant counties boundaries as part of the BVP.

II. Method of Collection

The 2010 BVP will be conducted in two phases, initial and final. During the initial BVP phase, every HEO in the BAS universe will receive a BVP form, a letter with instructions, and a CD containing a complete set of 2010 BAS maps in .pdf format for their governmental unit. The HEO is asked to review the 2010 BAS maps on the CD and return the BVP form within ten days of receipt. If the HEO determines that there are no changes to report, the HEO will sign and return the validated BVP form. If the HEO determines that boundary changes are needed, the HEO will be instructed to return the unsigned BVP form and work with their local BAS contact to submit changes through the BAS process. If either the HEO or the BAS contact submits 2010 BAS updates by March 1, 2010, the entity will be included in the second and final phase of the BVP.

In the final BVP phase, once the timely 2010 BAS updates are applied to the MAF/TIGER Database (MTDB), each HEO is provided a complete set of updated paper maps. This is their final opportunity to review the boundary and

verify that the BAS 2010 changes are reflected. In the final BVP phase, each HEO submits any remaining corrections directly to the Census Bureau using the instructions provided in the BAS respondent guide.

III. Data

OMB Control Number: 0607–0151.

Form Number: BVP–1; BVP–2.

Type of Review: Regular submission.

Affected Public: All actively functioning counties or statistically equivalent entities, incorporated places (including consolidated cities), minor civil divisions (MCDs), all federally recognized American Indian reservations (AIRs) and off-reservation trust land entities in the United States, and municipios, barrios and subbarrios in Puerto Rico.

Estimated Number of Respondents: 48,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 96,000 hours.

Estimated Total Annual Cost: $2,075,520. The estimate is based on an hourly rate of $21.62 from ''financial administration'' payroll in the Annual Survey of State and Local Government Employment.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 6.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 18, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–20181 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Procedures for Considering Requests and Comments From the Public for Textile and Apparel Safeguard Actions on Imports From Oman

AGENCY: International Trade Administration (ITA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 23, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Maria D'Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, Tel. (202) 482–4058, *maria_dandrea@ita.doc.gov,* Fax. (202) 482–0667.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III, Subtitle B, Section 321 through Section 328 of the United States-Oman Free Trade Agreement Implementation Act (the ''Act'') implements the textile and apparel safeguard provisions, provided for in Article 3.1 of the United States-Oman Free Trade Agreement (the ''Agreement''). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, an Omani textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Oman to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that ITA's Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8332 (73 FR 80289, December 31, 2008), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Oman, thereby allowing CITA to take corrective action to protect the viability of the domestic textile industry, subject to section 322(b) of the Act.

Pursuant to Section 321(a) of the Act and Section 7 of Presidential Proclamation 8332 of December 29, 2008, an interested party in the U.S. domestic textile and apparel industry may file a request for a textile and apparel safeguard action with CITA. Consistent with longstanding CITA practice in considering textile safeguard actions, CITA will consider an interested party to be an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) A domestic producer or producers of an article that is like or directly competitive with the subject Omani textile or apparel article; or (B) a domestic producer or producers of a component used in the production of an article that is like or directly competitive with the subject Omani textile or apparel article.

In order for a request to be considered, the requestor must provide the following information in support of a claim that a textile or apparel article from Oman is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article: (1) Name and description of the imported article concerned; (2) import data demonstrating that imports of an Omani

origin textile or apparel article that are like or directly competitive with the articles produced by the domestic industry concerned are increasing in absolute terms or relative to the domestic market for that article; (3) U.S. domestic production of the like or directly competitive articles of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof, along with an affirmation that to the best of the requester's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin; (4) imports from Oman as a percentage of the domestic market of the like or directly competitive article; and (5) all data available to the requester showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investment, and any other information, relating to the existence of serious damage or actual threat thereof caused by imports from Oman to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requester should provide best estimates and the basis therefor.

If CITA determines that the request provides the information necessary for it to be considered, CITA will publish a notice in the **Federal Register** seeking public comments regarding the request. The comment period shall be 30 calendar days. The notice will include a summary of the request. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

CITA will make a determination on any request it considers within 60 calendar days of the close of the comment period. If CITA is unable to make a determination within 60 calendar days, it will publish a notice in the **Federal Register**, including the date it will make a determination.

If a determination under section 322(b) of the Act is affirmative, CITA may provide tariff relief to a U.S. industry to the extent necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. The import tariff relief is effective beginning on the date that CITA's affirmative determination is published in the **Federal Register**.

Entities submitting requests, responses or rebuttals to CITA may submit both a public and confidential version of their submissions. If the request is accepted, the public version will be posted on the dedicated Oman Free Trade Agreement textile safeguards section of the Office of Textile and Apparel (OTEXA) Web site. The confidential version of the request, responses or rebuttals will not be shared with the public as it may contain business confidential information. Entities submitting responses or rebuttals may use the public version of the request as a basis for responses.

II. Method of Collection

When an interested party files a request for a textile and apparel safeguard action with CITA, ten copies of any such request must be provided in a paper format. If business confidential information is provided, two copies of a non-confidential version must also be provided. If CITA determines that the request provides the necessary information to be considered, it publishes a **Federal Register** notice seeking public comments on the request.

To the extent business confidential information is provided, a non-confidential version must also be provided. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 6 (1 for Request; 5 for Comments).

Estimated Time per Response: 4 hours for a Request; and 4 hours for each Comment.

Estimated Total Annual Burden Hours: 24.

Estimated Total Annual Cost to Public: $960.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 19, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–20283 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–809)

Circular Welded Non–Alloy Steel Pipe From the Republic of Korea: Partial Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: August 24, 2009.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Joe Shuler, at (202) 482-0189 or (202) 482–1293, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with 19 CFR 351.213(b), on December 1, 2008, Wheatland Tube Company (''Wheatland'') and United States Steel Corporation (''U.S. Steel''), manufacturers of the domestic like product, timely requested an administrative review of the antidumping duty order on circular welded non–alloy steel pipe from the Republic of Korea for the period November 1, 2007, through October 31, 2008. Wheatland requested that the Department of Commerce (the ''Department'') conduct an administrative review of the following producers and/or exporters of the subject merchandise: SeAH Steel Corporation (''Seah''); Hyundai HYSCO; Husteel Co., Ltd. (''Husteel''); Daewoo International Corporation; Miju Steel Making Co.; Samsun Steel Co., Ltd. (''Samsun''); Kukje Steel Co., Ltd.; Nexteel Co., Ltd. (''Nexteel''); MSteel Co., Ltd.; Kumkang Industrial Co., Ltd. (''Kumkang''); Histeel Co., Ltd.; Hyundai Corporation; Dongbu Steel Co., Ltd.; Dong–A-Steel Co., Ltd.; Korea Iron & Steel Co., Ltd.; Union Pipe Manufacturing Co., Ltd.; Union Steel Co., Ltd.; Tianjin Huanbohai Import &

Export Co.; Huludao Steel Pipe Industrial Co., Ltd.; Huludao City Steel Pipe; Benxi Northern Steel Pipes Co.; and Tianjin Shuangjie Steel Pipe Co. On the same date, U.S. Steel requested the Department conduct an administrative review of the following producers of subject merchandise: Husteel; Hyundai HYSCO; Nexteel; Samsun; and Seah.

On December 24, 2008, the Department initiated an administrative review covering the period November 1, 2007, through October 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008).

Wheatland withdrew its request for a review of Kumkang on July 31, 2009. Wheatland is the only party to have requested a review of Kumkang.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(l), the Department will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review or. The Department may extend this deadline if it determines that it is reasonable to do so. Although Wheatland withdrew its request for Kumkang after the 90-day period, the Department has not to date dedicated extensive time and resources to this review, only having recently issued a supplemental questionnaire to Kumkang. Therefore, in response to Wheatland's request, the Department hereby rescinds the administrative review for the period November 1, 2007, through October 31, 2008, for Kumkang.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, the antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice of partial rescission of administrative review.

Notification to Importers

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

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: August 18, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E4–20321 Filed 8–21–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Villa Marina Yacht Harbour, Inc.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of appeal.

SUMMARY: This announcement provides notice that Villa Marina Yacht Harbour, Inc. (Villa Marina) has filed an administrative appeal with the Department of Commerce requesting that the Secretary override the Puerto Rico Planning Board's (PRPB) objection to the proposed expansion of an existing marina in Fajardo, Puerto Rico.

DATES: Comments must be sent to the NOAA, Office of the General Counsel for Ocean postmarked or e-mailed no later than September 30, 2009. Requests for a public hearing must be filed within 30 days of publication of this notice.

ADDRESSES: Materials from the appeal record will be available at the NOAA, Office of the General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm*.

FOR FURTHER INFORMATION CONTACT: Gladys P. Miles, Attorney-Advisor, NOAA, Office of the General Counsel, 301–713–7384 or at *gcos.inquiries@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

Villa Marina has filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR Part 930, Subpart H. The appeal is taken from an objection by PRPB to Villa Marina's consistency certification for a U.S. Army Corps of Engineers permit for a marina expansion in Fajardo, Puerto Rico.

Under the CZMA, the Secretary may override PRPB's objection on grounds that the proposed activity is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the PRPB's coastal management program. 15 CFR 930.121. Conversely, to make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. 15 CFR 930.122.

II. Opportunity for Federal Agency and Public Comment

Pursuant to Department of Commerce regulations, the public and interested Federal agencies may submit comments on this appeal. Written comments must be sent no later than September 30, 2009 to the NOAA, Office of the General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or via e-mail to *gcos.comments@noaa.gov*.

III. Opportunity for a Public Hearing

Pursuant to Department of Commerce regulations, the Secretary may hold a public hearing on this appeal, either in response to a request for a public hearing or upon his own initiative. A request for a public hearing must be filed with the Secretary within 30 days of the publication of this notice in the **Federal Register**. If a hearing is held, it shall be noticed in the **Federal Register**, and the Secretary shall reopen the public and Federal agency comment period for a 10-day period following the hearing. Requests for a public hearing must be sent to the NOAA, Office of the General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or via e-mail to *gcos.comments@noaa.gov*.

IV. Appeal Documents

NOAA intends to provide the public with access to all publicly available materials and related documents comprising the appeal record on the following Web site: *http://www.ogc.doc.gov/czma.htm*; and during business hours, at the NOAA, Office of the General Counsel for Ocean Services. For additional information concerning this appeal, please contact Gladys P. Miles, Attorney-Advisor, NOAA, Office of the General Counsel, 301–713–7393 or *gcos.inquiries@noaa.gov*.

Dated: August 19, 2009.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[Federal Domestic Assistance Catalog No. {XX.XXX} Coastal Zone Management Program Assistance.]

[FR Doc. E9–20318 Filed 8–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Management Plan and Environmental Assessment for Thunder Bay National Marine Sanctuary: Notice of Public Availability

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public availability.

SUMMARY: In accordance with section 304(e) of the National Marine Sanctuaries Act (NMSA), as amended, NOAA is releasing the Final Management Plan and Environmental Assessment for Thunder Bay National Marine Sanctuary.

DATES: The Final Management Plan and Environmental Assessment for Thunder Bay National Marine Sanctuary will be available on August 25, 2009.

ADDRESSES: *To obtain a copy:* For a copy of the Final Management Plan and Environmental Assessment, please contact Tera Panknin, Management Plan Review Coordinator, Thunder Bay National Marine Sanctuary, 500 W. Fletcher Street, Alpena, MI 49707; (989) 356–8805 ext. 38; or via e-mail at *TBMPR@noaa.gov*. Copies can also be downloaded from the Thunder Bay NMS Web site at *http://thunderbay.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Tera Panknin at (989) 356–8805 ext. 38 or via e-mail at *TBMPR@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Thunder Bay was designated in 2000 as the nation's thirteenth national marine sanctuary. It is jointly managed by NOAA and the State of Michigan. It was designated to preserve nationally significant shipwrecks and regional maritime landscape through resource protection, education, and research.

Thunder Bay NMS's first management plan review began in September 2006 with public scoping meetings, followed by meetings of working groups made up of sanctuary staff, sanctuary advisory council members, and members of the public to developed action plans of the management plan.

NOAA released a draft revised management plan on February 24, 2009 (74 FR 8231) and accepted comments through April 10, 2009. During this time, NOAA held four public meetings in Rogers City, MI (March 18, 2009), Harrisville, MI (March 19, 2009), Lansing, MI (March 20, 2009), and Alpena, MI (March 24, 2009). A total of 24 people provided oral comments at those meetings, and 23 people submitted written comments on the draft revised management plan for a total of 61 individual comments. Each of these comments are addressed in the Response to Comments document.

II. Summary of the Final Management Plan

The core of the Final Management Plan is four action plans: Resource Protection, Education and Outreach, Research, and Sanctuary Operations and Administration. Each is summarized below:

A. Resource Protection Action Plan

This action plan involves considering the need for boundary expansion, assessing recreational use of the sanctuary, increasing compliance with regulations, fostering greater awareness of the sanctuary by recreational users, and preserving maritime heritage artifacts.

B. Education and Outreach Action Plan

The second action plan involves developing education material for a broader audience, increasing awareness of the sanctuary through education programs, enhancing sanctuary communications with other entities, maintaining a sanctuary presence in the community, and maximizing the effects of education through ongoing evaluation.

C. Research Action Plan

The third action plan involves characterizing the sanctuary's maritime heritage resources and landscape features, developing a monitoring program for sanctuary maritime heritage sites, continuing partnership with Alpena County Public Library to manage the Thunder Bay Sanctuary Research Collection, developing partnerships with local, national, and international researchers and organizations, and utilizing volunteers, fellows, students, and interns for sanctuary characterization, research, and monitoring.

D. Sanctuary Operations and Administration Action Plan

The fourth and final action plan involves developing infrastructure to enhance and maintain the Great Lakes Maritime Heritage Center and for research vessels, equipment, and field operations; hiring staff; enhancing operation of the Thunder Bay Sanctuary Advisory Council; and developing procedures to ensure safety for staff and sanctuary visitors.

III. Environmental Assessment

NOAA prepared an environmental assessment that analyzes the environmental impacts of the revised management plan pursuant to the National Environmental Policy Act. In doing so, the environmental assessment analyzes two alternatives: The status quo (no change to the 1999 management plan) and the preferred alternative (revising the 1999 management plan). Included with the environmental assessment is NOAA's finding of no significant impact.

Dated: August 17, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. E9–20332 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment; Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 16, 2009, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Public Session

1. Welcome and Introductions.
2. Review Status of Working Groups.
3. Proposals from the Public.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first-come, first-served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than September 9, 2009.

A limited number of seats will be available during the public session of the meeting.

Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 18, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–20250 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 15, 2009, 9 a.m., Room 4830, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Opening remarks by Bureau of Industry and Security.
4. Export Enforcement update.
5. Regulations update.
6. Working group reports.
7. Automated Export System (AES) update.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first-come, first-serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than September 8, 2009.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 23, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: August 18, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–20270 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Seven Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry, academic and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate

recommendations to the Department of Commerce. Each TAC meets approximately four times per year. Members of the Committees will not be compensated for their services.

The seven TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: The Export Administration Regulations (EAR) and Procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment) and Emerging Technology and Research Advisory Committee: (1) The identification of emerging technologies and research and development activities that may be of interest from a dual-use perspective; (2) the prioritization of new and existing controls to determine which are of greatest consequence to national security; (3) the potential impact of dual-use export control requirements on research activities; and (4) the threat to national security posed by the unauthorized exports of technologies.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Springer on (202) 482–2813.

Dated: August 18, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–20249 Filed 8–21–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Fiscal Year 2008 Army Services Contract Inventory Pursuant to Section 807 of the National Defense Authorization Act for Fiscal Year 2008

AGENCY: Department of the Army, DoD.

ACTION: Notice of publication.

SUMMARY: In accordance with section 2330a of Title 10 United States Code as amended by the National Defense Authorization Act for Fiscal Year 2008 (NDAA 08) section 807, the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA)), in cooperation with the Deputy Assistant Secretary of the Army (Procurement) (DASA (P)), and the Office of the Director, Defense Procurement and Acquisition Policy (DPAP) will make available to the public its inventory of activities performed pursuant to contracts for services. The inventory will be published to the ASA(M&RA) Web site at the following location: *http://www.asamra.army.mil/insourcing/*.

DATES: Inventory to be made publically available within September 23, 2009.

ADDRESSES: Send written comments and suggestions concerning this inventory to Dr. John Anderson, Headquarters Department of the Army, Assistant Secretary of the Army (Manpower and Reserve Affairs), Attn: Force Management Directorate (SAMR–FMMR), Army Pentagon, Washington, DC 20310. Telephone (703) 693–2119 or E-mail at *John.Anderson@hqda.army.mil.*

FOR FURTHER INFORMATION CONTACT: Dr. John Anderson, (703) 693–2119 or E-mail at *John.Anderson@hqda.army.mil.*

SUPPLEMENTARY INFORMATION: NDAA 08, section 807 amends section 2330a of Title 10 United States Code to require annual inventories and reviews of activities performed to services contracts. The Deputy Under Secretary of Defense (Acquisition and Technology) (DUSD(AT)) transmitted the Army inventory to Congress on August 4, 2009.

The ASA(M&RA) submitted the Army Fiscal Year 2008 Services Contract Inventory to the Office of the DPAP on June 24, 2009. Included with this inventory is a narrative that describes the data collection process, the inventory data, and the on-going inventory review process. A separate report is included with summary tables that list the number of contractor full time equivalents, direct labor costs and total service contract costs by organization, location, function, contract type and funding source. The report may be downloaded in electronic form (.pdf and .xlsx files) from the Web site Web site at the following location: *http://www.asamra.army.mil/insourcing/*. The inventory does not include contract numbers, contractor identification or other proprietary or sensitive information as this data can be used to disclose a contractor's proprietary proposal information.

An inventory of classified services contracts is not available and not published.

Jay D. Aronowitz,

Special Assistant ASA (M&RA).

[FR Doc. E9–20135 Filed 8–21–09; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–359]

Application To Export Electric Energy; Louis Dreyfus Energy Services L.P.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Louis Dreyfus Energy Services L.P. (LDES) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before September 23, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On June 30, 2009, DOE received an application from LDES for authority to transmit electric energy from the United States to Canada as a power marketer using international transmission

facilities located at the United States border with Canada. LDES does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which LDES proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. LDES has requested an electricity export authorization with a 5-year term.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by LDES has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the LDES application to export electric energy to Canada should be clearly marked with Docket No. EA–359. Additional copies are to be filed directly with Ernest W. Kohnke, Esquire, Louis Dreyful Highbridge Energy LLC, 20 Westport Road, Wilton, CT 06897 and Daniel E. Frank, Caileen N. Gamache, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on August 18, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–20301 Filed 8–21–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13224–000]

KW Sackheim Development; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On May 12, 2008, KW Sackheim Development filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Jackson Meadows Dam Project, located on the Middle Yuba River, in Nevada County, California. The proposed site is a non-generating feature of the Nevada Irrigation District's Yuba-Bear Project, FERC No. P–2266. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Jackson Meadows Development

The proposed project would consist of the following:

(1) An existing 1,530 foot-long, 195foot-high embankment dam; (2) an existing reservoir having a surface area of 738 acres and a storage capacity of 52,500 acre-feet; (3) one penstock consisting of an existing 42-inch-diameter pipe, 240 feet in length; (4) a new powerhouse containing one new generating unit having an installed capacity of 2.5 megawatts; and (5) a proposed 8,000-foot-long, 60-kva power transmission line. The proposed Jackson Meadows Development would have an average annual generation of 8.7 gigawatt-hours.

Applicant Contact: Kelly Sackheim, Principal, KW Sackheim Development, 5096 Cocoa Palm Way, Fair Oaks, CA 95628; phone: 916–962–2271.

FERC Contact: Joseph P. Hassell, 202–502–8049.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13224) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20215 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13301–002]

Town of Afton; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 14, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor.

b. *Project No.:* P–13301–002.

c. *Date filed:* April 29, 2009.

d. *Applicant:* Town of Afton.

e. *Name of Project:* Culinary Water System Hydroelectric Project.

f. *Location:* On the culinary water supply system, in the Town of Afton, Lincoln County, Wyoming. The project as proposed would occupy 12.3 acres of land in the Bridger-Teton National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r)

h. *Applicant Contact:* James K. Sanderson, Town of Afton, 416 Washington St., P.O. Box 310, Afton, WY 83110.

i. *FERC Contact:* Ryan Hansen, 202–502–8074, *ryan.hansen@ferc.gov.*

j. Due to the paucity of comments on the proceeding to date, we are now issuing the REA notice. Deadline for filing comments, recommendations,

terms and conditions, and prescriptions is 30 days from the issuance of this notice; reply comments are due 40 days from the issuance date of this notice. The deadline for filing comments on the Scoping Document (SD) for this proceeding is August 24, 2009. Any comments received on the SD will be addressed in the Environmental Assessment.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors 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 intervenor 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.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted and is now ready for environmental analysis.

l. *The project as proposed by the Town of Afton would consist of the following facilities:* (1) An existing intake at Periodic Springs; (2) an existing 870-foot-long, 14-inch-diameter pipe; (3) an existing 97,000 gallon buried concrete surge tank; (4) an existing 16,775-foot-long, 18-inch-diameter iron ductile waterline; (5) a new approximately 95-foot-long, 2-foot-diameter ductile iron penstock conveying flows from the existing pipe to the new powerhouse; (6) a new 20-foot-long by 20-foot-wide powerhouse containing a single Pelton turbine and generator with an installed capacity of 225 kilowatts (kW); (7) a new approximately 10-foot-long, 2.5-foot-diameter draft tube discharging flows from the powerhouse to an existing access hatchway at the top of an existing storage tank; (8) an approximately 3.4-mile-long existing section of Forest Service access roads that overlays the existing waterline; and (9) appurtenant facilities. The power generated will intertie with the 12.5-kilovolt (kV) distribution system at the culinary water treatment plant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

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.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing of Agency Recommendations	September 14, 2009.
Notice of the availability of the EA	October 15, 2009.
Ready for Commission Action	October 15, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20216 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13539–000]

Free Flow Power Ohio River 2, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 13, 2009, Free Flow Power Ohio River 2, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Simmesport Hydrokinetic Energy Project, located on the Atchafalaya River, Avoyelles and Pointe Coupee Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 460 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 1.3 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 40 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13539) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20218 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13538–000]

Free Flow Power Ohio River 1, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 13, 2009, Free Flow Power Ohio River 1, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Turnbull Island Hydrokinetic Energy Project, located on the Atchafalaya River, Avoyelles, West Feliciana, and Pointe Coupee Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 660 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmitting the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 2.3-mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 58 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: 978–226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13538) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20217 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13540–000]

Free Flow Power Ohio River 3, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 13, 2009, Free Flow Power Ohio River 3, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cypress Point Hydrokinetic Energy Project, located on the Atchafalaya River, Avoyelles, Pointe Coupee, and Saint Landry Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 2,020 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 9.1 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 177 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13540) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20219 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13542–000]

Free Flow Power Ohio River 5, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 5, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Bayou Latenache Hydrokinetic Energy Project, located on the Atchafalaya River, Pointe Coupee and Saint Landry Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 1,260 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 5.3 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 110 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13542) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20221 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13544–000]

Free Flow Power Ohio River 7, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 7, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Happytown Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Landry and Saint Martin Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 1,180 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 4.9 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 103 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13544) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20223 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13546–000]

Free Flow Power Ohio River 9, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 9, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Tensas Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Martin and Iberville Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 940 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 3.7 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 82 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13546) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20225 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13565–000]

Claire Fay and Charles Hotchkin; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, Intent To Waive Three Stage Consultation, and Establishing an Expedited Schedule for Processing

August 14, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from licensing.

b. *Project No.:* P–13565–000.

c. *Date filed:* August 4, 2009.

d. *Applicant:* Claire Fay and Charles Hotchkin.

e. *Name of Project:* Alder Brook Mini Hydro Project.

f. *Location:* On the Alder Brook, near the town of Richford, Franklin County, Vermont. This project does not occupy federal lands.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Charles Hotchkin, 321 Prive Hill Road, Richford, Vermont 05476. (802) 933–2217.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov* (202) 502–6093.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form a factual basis for complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission no later than 60 days from the application filing date, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* With this notice, we are waiving the 60-day timeframe in Section 4.32(b)(7) of 18 CFR for requesting additional studies and requests for cooperating agency status. Instead, requests for studies and cooperating agency status will be due 30 days from the date of this notice.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' All paper documents (original and eight copies) should be filled with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Alder Brook Mini Hydro Project would consist of the following: (1) A 4-foot-wide by 8-foot-long by 3-foot-high drop inlet to be located below the Town of Richford's culvert on Alder Brook; (2) a 12-inch-diameter, 250-foot-long penstock; (3) a shed containing one generating unit with total installed generating capacity of 7.0 kilowatts (kW); and (4) a 170-foot-long transmission line from the shed to the barn. The project would have an average annual generation of 37,621 kilowatt-hours.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number filed to access the documents. 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. A copy is also available for inspection and reproduction at the address in item h above.

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.

p. With this notice, we are initiating consultation with the Vermont State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* We intend to accept the consultation that has occurred on this project during the pre-filing period as satisfying our requirements for the standard 3-stage consultation process under 18 CFR 4.38 and for National Environmental Policy Act scoping. In addition, Commission staff propose to issue a single environmental assessment rather than issue a draft and final EA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20234 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13554–000]

Free Flow Power Ohio River 17, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 17, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Stouts Pass Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Mary Parish, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 720 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmitting the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 2.6-mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant

facilities. The proposed project would generate about 63 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13554) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20233 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13553–000]

Free Flow Power Ohio River 16, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 16, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Tiger Island Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Martin Parish, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 440 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 1.2 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 39 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13553) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20232 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13552–000]

Free Flow Power Ohio River 15, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 15, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the South Myette Point Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Mary Parish, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners'' express permission.

The proposed project would consist of: (1) 680 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 2.4 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 59 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P13552) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20231 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13551–000]

Free Flow Power Ohio River 14, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 14, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Myette Point Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Martin and Saint Mary Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 720 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 2.6 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 63 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13551) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20230 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13550–000]

Free Flow Power Ohio River 13, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 13, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Turkey Island Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Martin and Iberia Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 1,140 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 4.7 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 100 gigawatt-hours annually.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13550) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20229 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13549–000]

Free Flow Power Ohio River 12, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 12, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Lake Chicot Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Martin and Iberia Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 440 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 1.2 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 39 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13549) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20228 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13548–000]

Free Flow Power Ohio River 11, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 11, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Deadman Cove Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Martin Parish, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 820 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 3.4 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 77 gigawatt-hours annually.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13548) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20227 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13547–000]

Free Flow Power Ohio River 10, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 10, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Lake Mongoulois Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Martin Parish, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 1,120 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 4.6 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 98 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13547) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20226 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3701–091]

Tieton Hydropower, LLC; Southern California Public Power Authority; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

August 14, 2009.

On August 7, 2009, Tieton Hydropower, LLC (transferor) and Southern California Public Power Authority (transferee) filed an application for transfer of license of the Tieton Dam Project, located on the Tieton River in Yakima County, Washington.

Applicants seek Commission approval to transfer the license for the Tieton Dam from the transferors to the transferees.

Applicant Contact: Transferor: Mr. Chad Ross, Tieton Hydropower, LLC, 925 Fairgrounds Road, Goldendale, WA 98620, Phone (509) 773–5650. Transferee: Mr. Richard M. Helgeson, Southern California Public Power Authority, 225 South Lake Avenue, Suite 1410, Pasadena, CA 91101, phone (626) 793–9364.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments and motions to intervene: 30 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–3701–091) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20238 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2932–035]

S.D. Warren Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 14, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to Recreation Plan and Extension of Time Request.

b. *Project No:* 2932–035.

c. *Date Filed:* May 12, 2009.

d. *Applicant:* S.D. Warren Company.

e. *Name of Project:* Mallison Falls.

f. *Location:* The Project is located on the Presumpscot River in Cumberland County near the city of Gorham, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Thomas P. Howard, Sappi Fine Paper North America, Westbrook Mill, S.D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, Maine 04098–1597, (207) 856–4000.

i. *FERC Contact:* Jaime Blakesley, Telephone 312–596–4441, and e-mail: *jaime.blakesley@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* September 14, 2009.

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 and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* S.D. Warren Company requests Commission approval to amend the approved recreation plan to remove a requirement to install a pedestrian bridge for angler access in the bypass reach of the project. The licensee also requests an extension of time to complete specific required recreational improvements, including: a formal canoe portage trail with signage along Gorham shoreline, signage for formal parking at existing boat access downstream of dam, a car-top access site upstream of dam, parking near Mallison Road and Canal Street, and a car-top boat launch and take-out site next to an existing bridge abutment and roadside pull-out.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (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. 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.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

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. E9–20237 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2211–004]

Duke Energy Indiana, Inc.; Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

August 17, 2009.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2211–004.

c. *Date filed:* April 24, 2009.

d. *Applicant:* Duke Energy Indiana, Inc.

e. *Name of Project:* Markland Hydroelectric Project.

f. *Location:* the Ohio River in Switzerland County, Indiana, near the towns of Florence and Vevay, Indiana, and Warsaw, Kentucky. The project affects about 1 acre of Federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Tamara Styer, Duke Energy, Mail Code: EC12Y, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–0293 or *tsstyer@duke-energy.com.*

i. *FERC Contact:* Dianne Rodman, (202) 502–6077 or *Dianne.rodman@ferc.gov.*

j. *Deadline for filing scoping comments:* October 19, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list

for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application is not ready for environmental analysis at this time.

l. The existing Markland Hydroelectric Project consists of a powerhouse integrated into the north end of the U.S. Army Corps of Engineers' (Corps) Markland dam, which was constructed by the Corps between 1959 and 1964. The project has a total installed capacity of 64.8 megawatts (MW) and produces an average annual generation of 350,454 megawatt-hours. All generated power is utilized within the applicant's electric utility system. The project operates in run-of-release mode, has no storage, and only uses flows released by the Corps.

The project consists of the following facilities: (1) A 96-foot-high, 248-foot-wide intake structure, with steel trashrack panels installed along the east side, directing flows to the connected powerhouse; (2) a powerhouse, integral to the Corps' Markland dam, containing three vertical shaft Kaplan turbine/generator units with a total installed capacity of 64.8 MW; (3) a tailrace discharging flows immediately downstream of the dam; (4) a substation about 250 feet north of the powerhouse; (5) an approximately 750-foot-long existing access road; (6) a 9.37-mile-long, 138-kilovolt transmission line in a 100-foot-wide right-of-way extending to Fairview, Indiana; and (7) appurtenant facilities. The applicant is proposing to add a new, approximately 300-foot-long access road, leading to a new parking area for recreation use at the tailrace of the dam.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

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.

n. Scoping Process:

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Thursday, September 17, 2009.
Time: 9 a.m.
Place: Best Western Ogle Haus Meeting Rooms.
Address: 1013 W. Main St., Vevay, Indiana.

Public Scoping Meeting

Date: Thursday, September 17, 2009.
Time: 7 p.m.
Place: Best Western Ogle Haus Meeting Rooms.
Address: 1013 W. Main St., Vevay, Indiana.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 1 p.m. on September 17, 2009. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the parking lot of the Markland Hydroelectric Project, 13901 State Highway 156, Florence, Indiana. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Ms. Tamara Styer of Duke Energy at (704) 382–0293.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Kimberly D. Bose,
Secretary.

[FR Doc. E9–20236 Filed 8–21–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13545–000]

Free Flow Power Ohio River 8, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 8, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Whiskey Bay Hydrokinetic Energy Project, located on the Atchafalaya River, Saint Landry, Saint Martin, and Iberville Parishes, Louisiana. The sole purpose of a preliminary permit, if

issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 1,860 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 8.3 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 163 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13545) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20224 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13543–000]

Free Flow Power Ohio River 6, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 6, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Krotz Springs Hydrokinetic Energy Project, located on the Atchafalaya River, Pointe Coupee, Saint Landry, and Saint Martin Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 1,110 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 4.5 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 96 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13543) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20222 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13541–000]

Free Flow Power Ohio River 4, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

August 14, 2009.

On July 14, 2009, Free Flow Power Ohio River 4, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Melville Crevasse Hydrokinetic Energy Project, located on the Atchafalaya River, Pointe Coupee and Saint Landry Parishes, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or

otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) 1,720 turbine-generator units configured in a series of turbine arrays which in turn will be grouped to form turbine fields; (2) a combination of freestanding pilings, a floating barge-like platform, or existing shore infrastructure such as dock pilings onto which the turbine arrays will be moored; (3) submersible electric cables interconnecting the arrays within each turbine field and transmit the turbine field's generation to a shore station; (4) several shore stations each consisting of less than 100 square meters which will transition the submersible cabling to the overhead transmission; (5) a 7.6 mile, 69 kV line interconnecting the shore stations and delivering power to the project substation; and (6) appurtenant facilities. The proposed project would generate about 150 gigawatt-hours annually.

Applicant contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, Massachusetts 01930, phone: (978) 226–1531.

FERC Contact: Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13541) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20220 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Electrical Interconnection of the Golden Hills Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: The Bonneville Power Administration (BPA) has decided to offer BP Alternative Energy North America, Inc. a Large Generator Interconnection Agreement for interconnection of up to 200 megawatts of power into the Federal Columbia River Transmission System. The power would be generated by the Golden Hills Wind Project (Wind Project) in Sherman County, Oregon. To interconnect the Wind Project, BPA will string a jumper line at an existing transmission tower outside Klondike Schoolhouse Substation and connect to BPA's Biglow Canyon—Klondike Schoolhouse No. 2 230-kilovolt line. BPA will also purchase part of Portland General Electric's Biglow Canyon Substation, as well as about 1 acre of land next to Biglow Canyon Substation for the expansion of the substation to accommodate new equipment, including a new transmission tower. This new tower will then be connected to an existing transmission tower outside the substation fence. This decision to interconnect the Wind Project is consistent with and tiered to BPA's Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995), and the Business Plan Record of Decision (BP ROD, August 1995).

ADDRESSES: Copies of this tiered ROD and the Business Plan EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The RODs and EIS are also available on our Web site, *http://www.efw.bpa.gov.*

FOR FURTHER INFORMATION CONTACT: Gene Lynard, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–5699; or e-mail *gplynard@bpa.gov.*

Issued in Portland, Oregon, on August 13, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–20303 Filed 8–21–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Big Stone II Power Plant and Transmission Project Final Environmental Impact Statement (DOE/EIS–0377)

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision.

SUMMARY: The Western Area Power Administration (Western) received an application to interconnect the Big Stone II Power Plant and Transmission Project (Project) into Western's transmission system. The Project entails the construction of a new 600-megawatt (MW) coal-fired electric power generating station adjacent to the existing Big Stone plant in Grant County, South Dakota. The Project also includes approximately 140 miles of new or upgraded transmission lines. On June 26, 2009, Western published a notice of the availability of the Final Environmental Impact Statement (EIS) on the Project (74 FR 30559). Western considered the environmental impacts of the Project and has decided to allow the request to interconnect at Western's Morris and Granite Falls substations located in Minnesota.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Mr. Matt Blevins, NEPA Document Manager, Big Stone II EIS, Western Area Power Administration, A7400, P.O. Box 281213, Lakewood, CO 80228, telephone (800) 336–7288, fax (720) 962–7263, or e-mail *BigStoneEIS@wapa.gov.* For general information on DOE's NEPA review process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western is a Federal agency under the U.S. Department of Energy (DOE) that markets and transmits wholesale electrical power through an integrated 17,000-circuit mile, high-voltage transmission system across 15 western states. The Project is located within Western's Upper Great Plains Region, which operates and maintains nearly

100 substations and nearly 7,800 miles of Federal transmission lines in Minnesota, South Dakota, North Dakota, Montana, Nebraska, and Iowa. Western's Open Access Transmission Service Tariff (Tariff) provides open access to its transmission system. Western provides these services through an interconnection if there is available capacity on the transmission system, while protecting the transmission system reliability, and considering the applicant's objectives. Western's Federal involvement is related to the determination of whether to approve the interconnection request for the Project. Western's Proposed Action is to interconnect the Project to Western's transmission system.

Applicant's Objectives and Project

The Project proposed by Otter Tail Corporation (dba Otter Tail Power Company), Central Minnesota Municipal Power Agency, Heartland Consumers Power District, Montana-Dakota Utilities Company, and Western Minnesota Municipal Power Agency (dba Missouri River Energy Services), collectively referred to as the Co-owners, is a new 600–MW (net) coal-fired electric generating station and associated transmission lines and substation upgrades.

The Co-owners objectives include a combination of the following:

- Satisfy load growth;
- Replace current capacity and energy contracts that expire;
- Reduce reliance on energy production from existing oil- and gas-fired generating capacity and the associated higher costs and volatility of fuel costs;
- Reduce reliance on and exposure to power market prices;
- Address the limited deliverability of future capacity and energy purchases due to transmission constraints.

The Co-owners' proposed Project includes constructing and operating the Big Stone II coal-fired power plant and groundwater system, transmission additions and modifications, and substation additions and modifications. The Project would include a pulverized coal-fired, super-critical boiler using low-sulfur, Powder River Basin coal. The boiler would provide steam to a single steam turbine generator that would convert the mechanical energy of the steam turbine to electrical energy. A water-cooled steam condenser would accept the steam exhausted from the turbine and a circulating water system would supply cooling water from a wet cooling tower to the water-cooled steam condenser to dissipate the energy in the condensing steam. The wet cooling system would use surface water as the primary water supply and groundwater as the back-up water supply. The Project also includes installation of groundwater wells and a pipeline system to convey groundwater to the proposed plant site and other facilities associated with the use of groundwater for the Project.

Alternatives Considered

Western, in its preparation of the EIS, evaluated several categories of alternatives over which Western has no decision-making authority.[1] Western's Federal involvement is related to the determination of whether to approve the Co-Owners' interconnection request for the Project. The Proposed Action was to allow the interconnection request and the resulting Project. Under the No Action alternative, Western would deny the interconnection request. Western analyzed three likely scenarios under the No Action alternative: (1) The Co-owners would not proceed with the proposed Project, and the Co-owners would not secure alternate baseload generation and would not seek alternate transmission configurations, referred to as the *No-Build Alternative* in the Final EIS; (2) the Co-owners would not proceed with the proposed Project, and the Co-owners would likely fulfill their generation and transmission needs individually or cooperatively through alternative arrangements by seeking generation capacity and energy from other sources, if available, referred to as *Sub-Alternative 1* in the Final EIS; and (3) the Co-owners would likely proceed with the construction and operation of the proposed Big Stone II Power Plant in order to fulfill their objectives (as discussed above), but instead of obtaining transmission interconnections to the Federal transmission system, the Co-owners would be required to seek an alternative transmission configuration that would provide firm transmission service on the Midwest Independent System Operator (MISO) system or to purchase non-firm transmission rights from MISO over the MISO system, referred to as *Sub-Alternative 2* in the Final EIS.

Although the No Action alternative would eliminate Western's role in the Co-owners' proposed Project, the environmental impacts would likely still occur, as described under the sub-alternatives to the No Action alternative (described above), since the Co-owners would likely proceed with the construction and operation of the proposed power plant or would obtain the necessary generation capacity from another facility with similar environmental impacts as the proposed Project.

As required by 40 CFR 1505.2(b), Western has identified the *No-Build Alternative* as its environmentally preferred alternative. Under this alternative, Western would deny the interconnection request and not modify its transmission system to interconnect the proposed Project with its transmission system. Under this alternative, there would be no modifications to Western's transmission system, and thus no new environmental impacts. The Co-owners purpose and need would not be met.

In addition to analyzing the decision contemplated by Western, the Final EIS discussed several additional alternatives considered by the Co-owners, including two transmission alternatives and two cooling technology alternatives.

Several additional alternatives were considered but dismissed from detailed analysis and include the following: power generation technology alternatives, cooling technology alternatives, power plant location alternatives, transmission line technology alternatives, and transmission line corridor alternatives.

Mitigation Measures

Through public participation in the NEPA process as well as the concurrent permitting processes the Co-owners have undergone with other agencies, the Co-owners have altered the design of the proposed Project to minimize harm to the environment. For example, the Co-owners modified the original proposed Project to include a back-up water supply system using groundwater to avoid wetlands. Additionally, as part of the settlement agreement with the Minnesota Department of Commerce, the Co-owners are required to offset 100 percent of the carbon dioxide emissions attributable to the proposed Project's Minnesota consumers for a four-year period from the start of commercial operation. The Co-owners have also agreed to install mercury control technology that is most likely to remove at least 90% of mercury emitted from both the existing and proposed plants.

The Co-owners have committed to the mitigation measures as described in Tables 2.2–7, 2.2–8 and 2.6–2 of the Final EIS. The measures were designed to avoid and minimize harm to the environment from the proposed Project. In addition, Western will implement mitigation measures applicable to any

[1] The South Dakota Public Utilities Commission (SDPUC) has previously approved the construction and operation of the Big Stone II power plant. Likewise SDPUC and the Minnesota Public Utilities Commission have previously approved the transmission line route.

system modifications performed at Western facilities for proposed Federal action as described in Table 2.2–9 in the Final EIS.

With the above mentioned project modifications and agreements and implementation of the mitigation measures, all practicable means to avoid or minimize environmental harm from the proposed Project and Western's Federal Proposed Action have been adopted.

Comments on Final EIS

Western received comments from the U.S. Environmental Protection Agency (EPA) in a letter dated July 27, 2009, and from the Minnesota Department of Natural Resources (MnDNR) in a letter dated July 29, 2009. Based on a review of these comments, Western has determined that it is clear the comments do not present any significant new circumstances or information relevant to environmental concerns and bearing on the proposed Project or its impacts, and thus a Supplemental EIS is not required. The basis for this determination is summarized below.

EPA's letter noted several improvements to the project including the avoidance of wetlands, installation of mercury control equipment, and a partial offset of carbon dioxide emissions.

EPA's letter noted an apparent discrepancy in the Final EIS regarding mercury emissions at the proposed plant. The EPA correctly noted that the mercury emission limit in the Title V Air Quality Permit is 189 pounds (lbs) per year for the combined existing and proposed plants. The EPA also noted a mercury emission goal of 81.5 lbs per year for the combined plants. Western does not view this as a discrepancy, since the 81.5 lbs represents the actual estimated annual emission level that may be achieved after implementation of pollution controls, which is less than the annual emission limit of 189 lbs allowed by the Title V permit. The estimated annual emission of 81.5 lbs is based on the voluntary Settlement Agreement between the Co-owners and the Minnesota Department of Commerce, in which the Co-owners agreed to install control equipment for the existing plant and the proposed plant that is expected to remove at least 90 percent of the mercury emitted from the existing plant and proposed Big Stone II plant combined. Based upon the expected content of mercury for Powder River Basin coal (containing about 0.0715 parts per million by weight mercury, the approximate value expected for the coal used by the proposed Project), a 90 percent removal would result in annual emissions of approximately 81.5 lbs of mercury. Additionally, the 81.5 lb estimate is less than the estimated 189.6 lb of mercury emissions reported from the existing Big Stone plant in 2004. Therefore, if the proposed Big Stone II plant is constructed (and after implementation of emissions controls), mercury emissions from both plants would be less than the emissions from the existing plant, a reduction of approximately 57 percent when compared to 2004 values. As part of the Settlement Agreement, the Co-owners agreed to act in good faith to install control equipment as expeditiously as possible. However, in accordance with the Settlement Agreement, the Co-owners have four years after the commercial operation date of Big Stone II to achieve compliance with this requirement.

EPA's letter notes that the U.S. Global Change Research Program (USGCRP) published the June 2009 report, ''*Global Climate Change Impacts in the United States.*'' Drawing from a large body of scientific information and produced by a consortium of experts from government science agencies, universities, and research institutes, the report summarizes the science of climate change and the impacts of climate change on the United States, now and in the future. Concluding that global warming is unequivocal, the report states that the ''global warming observed over the past 50 years is due primarily to human-induced emissions of heat-trapping gases,'' primarily from the burning of fossil fuels. The report reviews the well-known global climate change topics and relates those same issues to the impacts forecasted to affect the U.S., particularly relating to predicted temperature and precipitation changes, extreme weather events, and sea level changes. Considerable discussion is devoted to impacts on water resources, agriculture, and ecosystems, as well as changes in the way the U.S. will generate and use energy (including future development of renewable energy resources), and potential impacts to air, rail, shipping, and road transportation. The report also discusses climate-related health impacts and the ways that climate change will affect society through impacts on the necessities and comforts of life. Many of these issues are discussed in greater detail in a consideration of climate change impacts to each of the regional geographic areas of the U.S. Predictions of climate change and future conditions come from analyses of computer models that simulate climate scenarios to which USGCRP relates, ''there is always some level of uncertainty.'' Nevertheless, USGCRP cites, ''the science of making skillful projections at these scales has progressed considerably, allowing useful information to be drawn from regional climate studies.'' Climate modeling in the report indicates there will be adverse impacts due to climate change affecting the three-state region (*i.e.*, South Dakota, North Dakota, and Minnesota) around the proposed Big Stone II plant. Examples of these effects, some positive and some negative, include increases in precipitation, including more frequent heavy downpours resulting in more flooding, rising temperatures and more frequent heat waves, longer growing seasons, and shifts in vegetation hardiness zones. Ecosystem disruptions causing changes in habitat, water, and food supply would cause some species to decline, cause shifts in the range of native species, or encourage invasions of non-native species. Some species would be better adapted to a warmer climate. A warmer climate would affect air quality, and would generally mean more ground-level ozone, causing more respiratory problems. Western notes the potential regional effects identified in the report are similar to the global effects discussed in the Final EIS, which EPA concluded ''the analysis provided in the Final EIS regarding green house gas emissions from the proposed plant is robust and accurate.''

MnDNR's letter expressed concerns that the Final EIS does not appear to address its concerns, but ''just reiterates claims made in the Draft EIS'' and that use of water from Big Stone Lake by the proposed plant would have serious impacts to water levels in the lake and base flow in the Upper Minnesota River during extended periods of drought and low runoff. In their letter, the MnDNR also asserted that the operating plan for the Big Stone Lake Dam is outdated and does not adequately address the public's interest when considering the proposed plant's water appropriation. Western notes that the Project's Co-owners made significant changes in the proposed Project after the May 2006 Draft EIS, and these changes were fully disclosed in a Supplemental Draft EIS issued in October 2007. MnDNR provided comments on the Supplement Draft EIS and as a result additional information was added to the Final EIS, including detailed responses to groundwater and surface water comments as noted in Volume II of the Final EIS. In summary, the South Dakota Water Management Board (SDWMB) issued Water Permit No. 6678–3 on November 1, 2006, which authorizes an additional 10,000

acre-feet of water annually from Big Stone Lake. The permit specifies the diversion rates allowed by the proposed plant, authorizes the construction of the water use system, and the placing of water to beneficial use subject to certain conditions. The permit includes the same withdrawal restrictions based on Big Stone Lake water levels and time of year as in the permit for the existing plant. The water appropriation permit was issued by the SDWMB in the interest of public policy, and thus water appropriations by the proposed Project are in conformance with South Dakota laws. The SDWMB, in issuing the permits for water withdrawal, have determined that the proposed water use would not be damaging for the intended purpose. Additionally, in accordance with the Settlement Agreement approved by the Minnesota Public Utilities Commission, the Project's Co-owners have agreed to provide all data used to evaluate the effects of water withdrawals from Big Stone Lake to the South Dakota Department of Environment and Natural Resources and MnDNR and to participate in meetings with State agencies to address the management of the Big Stone Lake water flow and level issues. Western notes MnDNR's desire to have the Minnesota/South Dakota Boundary Commission reconvened, however, that decision rests with the respective State governors.

Decision

Western's environmental record of decision (ROD) is to allow the Co-Owners' request for interconnection to Western's transmission system at Morris and Granite Falls substations in Minnesota and to complete modifications to these substations to support the interconnection.[2] Western's environmental decision to grant this interconnection request satisfies the agency's statutory mission and the Co-owners' objectives while minimizing harm to the environment. Additionally, an interconnection agreement must be completed in accordance with Western's Tariff.

The Co-owners have committed to minimize the propose Project's impact on the environment through the Project's design, the use of pollution control technology, the offset of carbon dioxide emissions, and the implementation of mitigation measures as summarized in Tables 2.2–7, 2.2–8, and 2.6–2 of the Final EIS. For its part, Western will adhere to mitigation measures for all modifications at its Morris and Granite Falls substations as noted in Table 2.2–9 of the Final EIS. Western conditions its environmental approval of the Co-owner's request to interconnect to Western's transmission system upon the adoption and implementation of the mitigation measures as described in the Final EIS.

This decision is based on the information contained in the Big Stone II Power Plant and Transmission Project Final EIS (DOE/EIS–0377). This ROD was prepared pursuant to the requirements of the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508) and DOE's Procedures for Implementing NEPA (10 CFR part 1021).

Dated: August 14, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–20300 Filed 8–21–09; 8:45 am]

BILLING CODE 6450–01–P

[2] Western's authority to issue a record of decision is pursuant to authority delegated on October 4, 1999, from the Assistant Secretary for Environment, Safety and Health to Western's Administrator.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–348–OK]

Grand River Dam Authority; Notice of Availability of Environmental Assessment

August 14, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed Grand River Dam Authority's proposed shoreline management plan (SMP) for the Pensacola Hydroelectric Project, located on the Grand River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma, and has prepared an environmental assessment (EA) on the SMP.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–1494) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments on the EA should be filed by September 14, 2009, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–1494–348) on all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Brian Romanek at (202) 502–6175.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20235 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–1113–004; ER08–1113–005]

California Independent System Operator Corporation; Supplemental Notice of Technical Conference

August 14, 2009.

On July 29, 2009, the Commission issued an order establishing technical conference in the above-captioned proceedings to explore issues concerning Market Efficiency Enhancement Agreements (MEEA) between the California Independent System Operator Corporation (CAISO) and eligible market participants. The technical conference will be held on Thursday, August 20, 2009, at 10 a.m. (EDT), in Hearing Room 7 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and ending at approximately 4 p.m. (EDT). The following additional information and instruction is provided regarding the conference.

The technical conference will afford Commission staff and interested parties an opportunity to discuss the issues related to the MEEAs. The conference is intended to be a working session focused on discussing the information necessary to execute a MEEA and the transactions under a MEEA that should receive MEEA pricing. The July 29, 2009 order outlined the issues to be discussed.

The technical conference will be open to the public. Although staff encourages all interested parties to attend in person, the conference will be accessible via telephone on a listen-only basis. For information regarding telephone access

to the conference, please e-mail *Sarah.McKinley@ferc.gov* no later than 5 p.m. (EDT) on Tuesday, August 18, 2009. You will then receive a confirmation e-mail containing the dial-in number and password. Staff requests that, to the extent possible, individuals calling from the same location share a single telephone line.

The conference will not be transcribed, and all interested persons will be afforded the opportunity to file post-conference comments. Dates for filing such comments will be established at the technical conference. Also, representatives from the Commission's Dispute Resolution Services office will be available to offer assistance to the parties to the extent they seek to pursue settlement negotiations.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information about this conference, please contact: Sarah McKinley, 202–502–8368, *Sarah.McKinley@ferc.gov,* for logistical issues and either Kendra Pace at 202–502–6703 or e-mail *Kendra.Pace@ferc.gov* or Christopher Demko at 202–502–6519 or e-mail *Christopher.Demko@ferc.gov* for other concerns.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20214 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–9–000]

Small Hydropower Development in the United States; Notice of Technical Conference

August 14, 2009.

Take notice that the Federal Energy Regulatory Commission will hold a Commissioner-led technical conference on December 2, 2009, from 1 p.m. to 5 p.m. Eastern Time in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open to the public and advance registration is not required.

The purpose of this conference is to explore issues related to licensing small non-federal hydropower projects in the United States. Specifically, the participants will discuss the Commission's program for granting licenses and exemptions from licensing, including 5-megawatt and conduit exemptions. The conference will also provide an opportunity for industry, state and federal agencies, tribes, and other stakeholders to express their views and suggestions for processing applications for small hydropower projects. The agenda for this conference will be published at a later date.

A free webcast of this conference will be available through *http://www.ferc.gov.* Transcripts of the conference will also be made available. Instructions for viewing the webcast and for obtaining transcripts will be published at a later date.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about this conference, please contact Steve Hocking at (202) 502–8753 or *steve.hocking@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20239 Filed 8–21–09; 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

July 31, 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. CP08–431–000	07–28–09	Sherrod Brown.
2. P–400–051	08–05–09	Greg Stobb, Edwin Schlapfer.

Docket No.	File date	Presenter or requester
3. P–405–087	08–03–09	Benjamin L. Cardin.
4. P–12569–001	08–06–09	Gregory Griffith.
5. P–12569–001	08–04–09	Dan Boettger.
6. P–12737–002	08–06–09	Brenda Winn.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–20213 Filed 8–21–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8948–4]

North Carolina Waters Along the Entire Length of New Hanover County No Discharge Zone Determination

The Environmental Protection Agency (EPA), Region 4, concurs with the determination of the North Carolina Department of Environment and Natural Resources (DENR), Division of Water Quality (DWQ) that adequate and reasonably available pumpout facilities exist for the designation of New Hanover County North Carolina Coastal Waters as a No Discharge Zone (NDZ). Specifically these waters extend three nautical miles (nm) into the Atlantic Ocean along the entire length of New Hanover County, including Futch Creek, Pages Creek, Bradley Creek, Hewlett's Creek, Howe Creek, Whiskey Creek, Snow's Cut, as well as unnamed tributaries and all unnamed tidal creeks to those waters.

The geographic description including latitudes and longitudes are as follows: Northern border of New Hanover County with southern border of Pender County (34°17′53.5″ N 77°42′32.2″ W), to a point 3 nm off the coast at the intersection of New Hanover and Pender Counties (34°16′01.9″ N 77°40′20.5″ W).

Intersection of the southern tip of New Hanover County with Brunswick County at the Cape Fear River (33°55′43.0″ N 77°56′13.6″ W), southeastward along the extended intersection of the two counties, 3 nm into the Atlantic Ocean (33°53′07.5″ N 77°55′34.5″ W).

This petition was filed pursuant to the Clean Water Act, Section 312(f)(3), Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4. A NDZ is defined as a body of water in which the discharge of vessel sewage, both treated and untreated, is prohibited.

Section 312(f)(3) states:

After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

According to DENR DWQ the following facilities are located in New Hanover County for pumping out vessel holding tanks:

(1) Carolina Beach Municipal Marina, Carolina Beach, 910–458–2540, open 24/7, 6′ draft at mean low tide

(2) Carolina Beach State Park Marina, Carolina Beach State Park, Carolina Beach, 910–458–7770, 8 a.m.–5:45 p.m., 7 days/week, 6′ draft at mean low tide

(3) Federal Point Yacht Club, 910 Basin Road, Carolina Beach, 910–458–4511, only available to club members, 5′ draft at mean low tide

(4) Mona Black Marina, Carolina Beach, 910–458–0575, open 24/7, 20′ draft at mean low tide

(5) Joyner Marina, Carolina Beach, 910–458–5053, open 7 a.m.–6 p.m., 7 days per week, 6′ draft at mean low tide

(6) Bridge Tender Marina, City of Wilmington, 910–256–6550, 7 a.m.–8 p.m., 7 days/week, 10′ draft at mean low tide

(7) Creekside Yacht Club, City of Wilmington, 910–350–0023, Operational December 2009, 4′ draft at mean low tide

(8) Sea Path Yacht Club, Town of Wrightsville Beach, 910–256–3747, 7 a.m.–7 p.m., 7 days/week, 10′ draft at mean low tide

(9) Wrightsville, Beach Marina & Transient Dock, Town of Wrightsville Beach, 910–256–6666, 7 a.m.–7 p.m., 7 days/week, 12′ draft at mean low tide

Two Marinas that are located within 7 nautical miles of the proposed NDZ are:

(A) Wilmington Marine Center, 910–395–5055, 8 a.m.–5 p.m. 7 days/week, 7′ draft at mean low tide

(B) Bald Head Island Marina, 910–457–7380, 8:30 a.m.–5:30 p.m. 7 days/week, 8′ draft at mean low tide

The total vessel population for New Hanover County as of August 5, 2008 was 13,940. This number reflects active vessel registrations and was obtained from the North Carolina Wildlife Resources Commission. During the period of 2006 to 2008, the total number of active registered vessels increased nearly 15%. The result is that there are nearly 1,800 more pleasure boats in the area waters today than just two years ago, with the largest increase occurring in boats between 16′ and 25′ in length. It is recognized that only a percentage of the vessels in the coastal waters of New Hanover County are equipped with a Marine Sanitation Device (MSD). To estimate the number of MSDs in use, percentages obtained from EPA (Region 2) were applied, and are listed below:

Boat Length	Percent with MSDs
<16′	8.3
16′–25′	10.6
26′–40′	78.5
>40′	82.6

This yields an estimated 2,046 MSDs in use by registered boats within New Hanover County.

Through the use of a marina survey, the number of transient boats serviced by marinas in New Hanover County was calculated to be approximately 180 per month. This figure was arrived at by using the peak season transient boat figures from each marina. Using the figures for both county and transient boats, the total number of MSDs in the New Hanover County waters is estimated to be 2,194. There are 9 marinas within New Hanover County and this yields a ratio of about 244 boats per pumpout facility. This figure does not include the two marinas that are located within 7 nautical miles of this proposed NDZ area.

All vessel pumpout facilities that are described either discharge into State approved and regulated septic tanks or State approved on site waste treatment plant, or the waste is collected into a large holding tank for transport to a sewage treatment plant. Thus all vessel sewage will be treated to meet existing standards for secondary treatment. Comments regarding this proposed action should be addressed to David Parker, Chief, Coastal Section, EPA Region 4, Water Protection Division, 61 Forsyth Street, Atlanta, Georgia 30303–

3104. Comments regarding this proposed action will be accepted until September 23, 2009.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E9–20288 Filed 8–21–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information Relevant to the Regionalization of Emergency Medical Care Delivery Systems and Demonstration Model Development

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: This is a time-sensitive Request for Information (RFI) issued by the Emergency Care Coordination Center in the Office of the Assistant Secretary for Preparedness and Response on behalf of the Council on Emergency Medical Care (CEMC) and the Federal Interagency Committee on Emergency Medical Services (FICEMS)—collectively known as the Emergency Care Enterprise (ECE). The information requested is meant to ascertain key concepts, best practices, and operational approaches to support regionalized, comprehensive and accountable emergency care and trauma systems. The information will be analyzed by the ECCC to help guide the development of demonstration programs that design and evaluate innovative models of regionalized, coordinated and accountable emergency care and trauma systems.

ADDRESSES: Responses to this RFI may be submitted electronically to *eccc@hhs.gov* by COB September 30th 2009.

FOR FURTHER INFORMATION CONTACT: For further information on this RFI or the Emergency Care Coordination Center (ECCC), please contact Melicia Seay, Program Analyst, by e-mail at *melicia.seay@hhs.gov* or by phone at 202–260–1383.

SUPPLEMENTARY INFORMATION: The Emergency Care Coordination Center (ECCC) was created in order to: (1) Lead an enterprise to promote and fund research in emergency medicine and trauma health care, (2) promote regional partnerships and more effective emergency medical systems in order to enhance appropriate triage, distribution, and care of routine community patients, and (3) promote local, regional, and State emergency medical systems' preparedness for and response to public health events. The office addresses the full spectrum of issues that have impact on care in hospital emergency departments, encompassing the complete continuum of patient care from the pre-hospital environment to disposition from emergency or trauma care. The Office coordinates with existing executive departments and agencies that perform functions relating to emergency medical systems in order to ensure unified strategy, policy, and implementation.

The issue of regionalization is one of great interest across academic and clinical communities and is frequently touted as a potential solution to healthcare reform. The Future of Emergency Care reports published by the Institute of Medicine in 2006 recommended the establishment of a demonstration program to promote coordinated, regionalized, and accountable emergency care delivery systems. As demonstrated by existing systems for trauma, cardiac arrest, and stroke patients, regionalized emergency care systems help get the right patients to the right hospitals in the right amount of time, improve patient outcomes, and reduce costs. These systems typically require careful coordination amongst 9–1–1 dispatch, pre-hospital emergency medical services, EMS system medical direction, categorization/designation of medical facilities, interfacility transfer protocols, data collection/analysis, and ongoing system-wide quality improvement.

Yet regionalization of emergency care remains poorly defined and often misunderstood, with competing definitions, a variety of organizational and financial structures, and a lack of understanding regarding the implementation, evaluation, feasibility, and long term consequences of regional emergency care. Even amongst the State Trauma Systems, for instance, there is wide-scale variability in terms of resourcing mechanisms, support levels, functionality, and systems-wide interoperability. While some states have data mechanisms in place to monitor emergency care system status including medical facility bed availability and patient tracking, these systems vary in terms of management, sophistication and purpose, often collecting and reporting different data without uniform data definitions or agreement on which data should be collected.

The ECCC, in coordination with the CEMC and FICEMS, aims to demonstrate model systems for Emergency Care through the development of regionalization demonstration projects that will provide information and lessons learned while generating guidance for the nationwide deployment of regionalized and accountable emergency care delivery systems.

Issues on Which Information Is Requested

The ECCC seeks input regarding regionalization of emergency care, with a focus on identification of the challenges and opportunities that could be addressed through federally funded national demonstration projects. The scope of emergency care being considered is defined as beginning with an event, disease, or condition that causes an individual to seek care through EMS or in an ED setting and ending with departure from the ED (either by admission to another hospital department, through discharge from the ED, or via transfer to another hospital).

We welcome your comments, research findings, and/or practical experience on the following topics that can be used both to enhance our knowledge of regional emergency care networks and to help formulate guidance and strategies for potential Federal programs to develop regional emergency care systems. Please provide concise responses in the context of regionalization to any or all of the following topics.

A. Existing Models. Please describe existing trauma or EMS regions in terms of characteristics such as: overall structure and organization, boundaries and geography, governance or oversight mechanisms and authorities, triage-transfer protocols, sustained financial support and provider reimbursement, data collection procedures, resource tracking, and communication/coordination of relationships amongst State leadership, 9–1–1 services and/or EMS system medical direction, individual regions, etc. If desired, include opinions regarding the overall functioning and effectiveness of existing systems.

B. Analysis of Current Practices in Regionalized Clinical Care. Whether at the local, State, or inter-State level, please provide suggestions and justifications as to which existing systems or specific elements of regionalized care models specifically merit further investigation, development, or targeted alteration and which clinical conditions are most suitable to regionalized care delivery. Please provide specific evidence where available and applicable.

C. Communications Infrastructure. Please provide information on appropriate data elements that should be incorporated within regionalization systems to provide for situational

awareness on resource availability. List the measurable variables and data elements that you believe need to be defined and captured in order to effectively support regional delivery of care. Also include any suggestions as to which common data elements, at a minimum, should be included within a standardized data language to facilitate, encourage, and improve the support and integration of the various state resource tracking mechanisms.

D. Opportunities and challenges in regionalized care delivery. Please share your opinions on the potential benefits, obstacles, drawbacks, and consequences (both intended and unintended) of regionalized healthcare models, providing specific evidence where feasible. If possible, elaborate on the effects regionalization may produce on providers' financial viability, patient access to care, healthcare service utilization rates, disaster preparedness efforts, and response capabilities.

E. Evaluation of regionalized care delivery systems. Please provide comments on how regionalized care systems can be objectively assessed and evaluated, including suggestions on appropriate measures of programmatic success or failure and opinions on which data sources could be used to establish compliance with regional performance benchmarks. Where possible, also list measurable ways to assess regionalization's impact with regard to health outcomes, including factors such as morbidity and mortality, time-to-care, condition-specific treatment, quality of care, patient safety, etc.

F. Adaptation of regionalization to emergency medical care. Given the legal requirement to screen and stabilize ED patients, the need for time-sensitive, high-quality care in emergency settings, and the diversity of patient populations and geographic locations, please provide insights or commentary on how the concept of regionalization could be adapted and/or customized to fit the unique aspects of emergency medical care.

G. Additional information. Please provide any additional opinions, suggestions, or comments as to how the ECCC and the Emergency Care Enterprise can shape demonstration projects of regionalized, coordinated, and accountable systems of emergency care to effectively utilize limited resources, facilitate information management and flow, increase the efficiency and effectiveness of the emergency healthcare delivery system, and enhance the overall quality of care provided.

Please indicate which type of institution or organization you are primarily affiliated with (using the following categories):

- Academia;
- Small Business;
- Healthcare Facility;
- Trauma or EMSS region;
- Federal Government;
- State Government;
- Healthcare Professional;
- Patient Advocacy Group;
- Other (briefly define).

This request for information is for planning purposes only and shall not be interpreted as a solicitation for applications or as an obligation on the part of the government. The government will not pay for the preparation of any information submitted or for the government's use of that information.

Dated: August 14, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response, Rear Admiral, U.S. Public Health Service.

[FR Doc. E9–20162 Filed 8–21–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0360]

Agency Information Collection Activities; Proposed Collection; Comment Request; FDA Public Health Notification Readership Survey (formerly known as ''Safety Alert/ Public Health Advisory Readership Survey'')

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA Public Health Notification Readership Survey.

DATES: Submit written or electronic comments on the collection of information by October 23, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Public Health Notification Readership Survey (formerly known as Safety Alert/Public Health Advisory Readership Survey) (PHS Act, Section 1701 (a)(4)); OMB Control Number 0910–0341–Extension

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21

U.S.C. 375(b)) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH), communicates these risks to user communities through two publications: (1) The Public Health Notification (PHN) and (2) the Preliminary Public Health Notification (PPHN). The PHN is published when CDRH has information or a message to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type, and that information may not be readily available to the affected target audience in the health care community. CDRH can make recommendations that will help the health care practitioner mitigate or avoid the risk.

The PPHN is also published when CDRH has information to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type. However, two additional conditions exist that make the use of this type of notification preferable: (1) CDRH's understanding of the problem, its cause(s), and the scope of the risk that is still evolving, so that in order to minimize the risk, the center believes that health care practitioners needs the information they can provide, however incomplete, as soon as possible and (2) the problem is actively being investigated by the center, private industry, another agency or some other reliable entity, so that the center expects to be able to update the PPHN when definitive new information becomes available. Notifications are sent to organizations affected by risks discussed in the notification, such as hospitals, nursing homes, hospices, home health care agencies, retail pharmacies, and other health care providers. Through a process for identifying and addressing postmarket safety issues related to regulated products, CDRH determines when to publish notifications.

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)), authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly notifications for reducing risks are explained, the timeliness of the information and whether the reader has taken any action to eliminate or reduce risk as a result of the information in the alert. Subjects will also be asked whether they wish to receive future notifications electronically, as well as how the PHN program might be improved.

The information collected will be used to shape FDA's editorial policy for the PHN and PPHN. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content and format, and method of dissemination.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

PHS Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 1701(a)(4)	308	3	924	.17	157

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the PHN program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20247 Filed 8–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee Unaccompanied Minor Placement Report & Minor Progress Reports; ORR–3 and ORR–4.

OMB No.: 0970–0034.

Description: The two reports collect information necessary to administer the Unaccompanied Refugee Minor (URM) program. The ORR–3 (Placement Report) is submitted to the Office of Refugee Resettlement (ORR) by the State agency at initial placement and whenever there is a change in the child's status, including termination from the program. The ORR–4 (Progress Report) is submitted annually and records the child's progress toward the goals listed in the child's case plan.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–3	15	63	0.25	236.25
ORR–4	15	63	0.30	283.50

Estimated Total Annual Burden Hours: 519.75

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370

L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 18, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–20175 Filed 8–21–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HRSA/Bureau of Primary Health Care Capital Improvement Program Application Electronic Health Records (EHR) Readiness Checklist (OMB No. 0915–0325)—Extension

The American Recovery and Reinvestment Act (ARRA) provides $1.5 billion in grants to support ''construction, renovation and equipment'', and ''the acquisition of health information technology systems, for health centers including health center controlled networks receiving operating grants under section 330'' of the Public Health Service (PHS) Act, as amended (42 U.S.C. 254b). HRSA is requesting extension of the approval of the Electronic Health Records (EHR) Readiness Checklist portion of the application where applicants must provide information to demonstrate readiness for electronic health records if they propose to use funds for electronic health record (EHR) related purchases. Of the $1.5 billion, HRSA will award approximately $850 million, through limited competition grants, for one-time Capital Improvement Program (CIP) grant funding in fiscal year (FY) 2009 to support existing section 330 funded health centers. Funding under this opportunity will address pressing capital improvement needs in health centers, such as construction, repair, renovation, and equipment purchases, including health information technology systems. Applicants must provide information using the EHR Readiness Checklist that demonstrates comprehensive planning and readiness for implementing EHRs.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
EHR Readiness Checklist	568	1	568	.25	142
Total	568		568		142

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: August 18, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–20306 Filed 8–21–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0345]

Agency Information Collection Activities: Proposed Collection; Comment Request; Internet Survey on Barriers to Food Label Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Internet Survey on Barriers to Food Label Use.

DATES: Submit written or electronic comments on the collection of information by October 23, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management (HFA–710), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, *Daniel.Gittleson@fda.hhs.gov*, 301–796–5156.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Internet Survey on Barriers to Food Label Use

Previous FDA studies have examined the prevalence of food label use and the types of tasks food label users perform. Analyses of repeated survey data show a sharp decline in label use between 1994 and 2002. Much of the decline in label use occurred among young consumers, i.e., those younger than 35 years old. In 1994, approximately 13% of U.S. consumers reported ''never'' using the food label the first time they purchase a product, with no significant differences between various age groups. In 2002, the proportion of consumers reporting ''never'' using the food label the first time they purchase a product had increased to 19%, a significant increase over the 1994 percentage. In comparison, the proportion of consumers younger than 35 years old who reported ''never'' using the food label the first time they purchase a product had increased from 13% in 1994 to nearly 30% in 2002. Therefore, FDA is proposing to conduct an Internet survey to assess barriers to food label use by U.S. consumers.

FDA conducts research and educational and public information programs relating to food safety under its broad statutory authority, set forth in section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2), to protect the public health by ensuring that foods are ''safe, wholesome, sanitary, and properly labeled,'' and in section 903(d)(2)(C) (21 U.S.C. 393(d)(2)(C)), to conduct research relating to foods, drugs, cosmetics and devices in carrying out the act. The study is part of an on-going effort by FDA to collect data concerning consumer perceptions, attitudes, and behaviors and their impacts on food label usage.

The study, the Internet Survey on Barriers to Food Label Use, is a voluntary consumer survey. The purpose of the study is to explore possible explanations for food label use and non-use among U.S. consumers. In particular, the study will collect data from four groups of consumers: (1) those older than 35 years that report regularly using the food label; (2) those older than 35 years old that report infrequently using the food label; (3) those 35 years and younger that report regularly using the food label; (4) those 35 years and younger that report infrequently using the food label. The study goals are to: (1) identify attitudes and beliefs among consumers toward health, diet and label usage; (2) determine relationships between those attitudes and beliefs, as well as demographics, with food label use and non-use; and (3) evaluate the relative importance of these attitudes between consumers of various age groups to determine whether barriers to label use differ between younger consumers and older consumers. The information collected from the study is necessary to inform the agency's efforts to improve consumer understanding and use of the food label. The results of the study will not be used to develop population estimates.

The Internet survey data will be collected using participants of an Internet panel of approximately 43,000 people. Participation in the experimental study is voluntary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Portion of Study	No. of Respondents	Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pre-test	60	1	60	0.167	10
Screener	8,000	1	8,000	0.0083	66
Survey	1,000	1	1,000	0.167	167
Total		1	9,060		243

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's burden estimate is based on prior experience with Internet panel experiments similar to the study proposed here. Sixty (60) panel members will take part in a pre-test of the survey, estimated to last 10 minutes (0.167 hours), for a total of 10.02 hours, rounded to 10. Approximately 8,000 respondents will complete a screener to determine eligibility for participation in the study, estimated to take 30 seconds (0.0083 hours), for a total of 66.4 hours, rounded to 66 hours. One thousand (1,000) respondents will complete the full survey, estimated to last 10 minutes (0.167 hours), for a total of 167 hours. The total estimated burden is 243 hours.

Dated: August 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–20248 Filed 8–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2009–E–0048 and FDA 2009–E–0047]

Determination of Regulatory Review Period for Purposes of Patent Extension; LEXISCAN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LEXISCAN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LEXISCAN (regadenoson monohydrate). LEXISCAN is indicated for radionuclide myocardial perfusion imaging in patients unable to undergo adequate exercise stress. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for LEXISCAN (U.S. Patent Nos. 6,403,567 and 6,642,210) from CV Therapeutics, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibilities for patent term restoration. In a letter dated February 26, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LEXISCAN represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LEXISCAN is 2,446 days. Of this time, 2,113 days occurred during the testing phase of the regulatory review period, while 333 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 1, 2001. The applicant claims August 2, 2001, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 1, 2001, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: May 14, 2007. FDA has verified the applicant's claim that the new drug application (NDA) 22–161 was submitted on May 14, 2007.

3. *The date the application was approved*: April 10, 2008. FDA has verified the applicant's claim that NDA 22–161 was approved on April 10, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,024 days and 977 days of patent term extension, respectively.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by October 23, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by February 22, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 31, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–20307 Filed 8–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Diabetes and Lipids.
Date: September 15–16, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David Weinberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. 301–435–1044. *David.Weinberg@nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.
Date: September 17–18, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892. 301–435–1779. *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Microbiology and Epidemiology.
Date: September 18, 2009.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892. 301–402–5671. *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Alcohol and Toxicology.
Date: September 22–23, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. (301) 435–1713. *melchioc@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.
Date: September 23–24, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.
Contact Person: Denise R. Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892. 301–435–0198. *shawdeni@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Cell Death in Neurodegeneration Study Section.
Date: September 24–25, 2009.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.
Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892. 301–435–1197. *bsokolov@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Biological Rhythms and Sleep Study Section.
Date: September 29, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1208, MSC 7844, Bethesda, MD 20892. 301–435–1119. *mselmanoff@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroendocrinology, Neuroimmunology, and Behavior Study Section.
Date: September 30–October 1, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892. 301–435–1119. *mselmanoff@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.
Date: September 30–October 1, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Mark Hopkins San Francisco, One Nob Hill, San Francisco, CA 94108.
Contact Person: Richard A. Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892. (301) 435–1219. *currieri@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20329 Filed 8–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.
Date: November 16–18, 2009.
Open: November 16, 2009, 5:45 p.m. to 7 p.m.
Agenda: To discuss matters of program relevance.
Place: Eisenhower Hotels, Conference Center and Resort, 2634 Emmitsburg Road, Gettysburg, PA 17325.
Closed: November 16, 2009, 7 p.m. to 9:30 p.m.
Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.
Place: Eisenhower Hotels, Conference Center and Resort, 2634 Emmitsburg Road, Gettysburg, PA 17325.

Closed: November 17, 2009, 8 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.

Place: Eisenhower Hotels, Conference Center and Resort, 2634 Emmitsburg Road, Gettysburg, PA 17325.

Closed: November 18, 2009, 8 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.

Place: Eisenhower Hotels, Conference Center and Resort, 2634 Emmitsburg Road, Gettysburg, PA 17325.

Contact Person: Claire Kelso, Intramural Program Specialist, Division of Intramural Research, Office of the Scientific Director, National Human Genome Research Institute, 50 South Drive, Building 50, Room 5222, Bethesda, MD 20892–8002, 301 435–5802, *claire@nhgri.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20328 Filed 8–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0103]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on September 10, 2009, in Detroit, Michigan. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Thursday, September 10, 2009, from 8:30 a.m. to 1 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the Marriott Detroit at The Renaissance Center, Renaissance Center, Detroit, Michigan 48243. Written materials, requests to make oral presentations, and requests to have a copy of your materials distributed to each member of the Committee prior to the meeting should be sent to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by September 1, 2009. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2009–0103) and may be submitted by any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2009–0103) in the subject line of the message.
- *Fax:* (703) 483–2999.
- *Mail:* Martha K. Landesberg, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions must include the words ''Department of Homeland Security Data Privacy and Integrity Advisory Committee'' and the Docket Number (DHS–2009–0103). Comments will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780, by fax (703) 235–0442, or by e-mail to *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). During the meeting, the Chief Privacy Officer will provide the DHS Data Privacy and Integrity Advisory Committee an update on the activities of the DHS Privacy Office. The Committee will also hear reports on DHS Components' outreach and engagement efforts with ethnic and religious communities in the metropolitan Detroit area, including presentations by U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), and U.S. Citizenship and Immigration Services (USCIS). The agenda will be posted in advance of the meeting on the Committee's Web site at *http://www.dhs.gov/privacy.* Please note that the meeting may end early if all business is completed.

At the discretion of the Chair, members of the public may make brief (*i.e.,* no more than three minutes) oral presentations from 11:30 a.m. to 12 p.m. If you would like to make an oral presentation at the meeting, we request that you register in advance or sign up on the day of the meeting. If you wish to provide written materials to be distributed to each member of the Committee in advance of the meeting, please submit them, preferably in electronic form to facilitate distribution, to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by September 1, 2009.

Information on Services for Individuals With Disabilities

For information on services for individuals with disabilities or to request special assistance, contact Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

Dated: August 17, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–20265 Filed 8–21–09; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: File No. OMB–53, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day Notice of Information Collection Under Review: File No. OMB–53, E-Verify Non-User Survey and Employee Survey in Arizona; OMB Control No. 1615–0108.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 2, 2009, at 74 FR 26412 allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public

comments. Comments are encouraged and will be accepted until September 23, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0108. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* E-Verify Non-User Survey and Employee and Employer Survey in Arizona.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–53); U.S. Citizenship and Immigration Services

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The data collected on these surveys will be used to evaluate the E-Verify Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Web survey of non-users 2,250 respondents × .333 (20 minutes) per response. Arizona interview with employers 100 respondents × 2 hours per response. Arizona interview with employees 450 respondents × 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,399.

If you need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Web site at: *http://www.regulations.gov*

If additional information is required contact: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: August 18, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–20255 Filed 8–21–09; 8:45 am]

BILLING CODE 9111–97–P3

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0433]

Certificate of Alternative Compliance for the Tug Boat LA FORCE

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the tug boat LA FORCE as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on May 15, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0433 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Division, U.S. Coast Guard, telephone 504–671–2153. 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:

Background And Purpose

The tug boat LA FORCE will operate as part of an articulated tug and barge (ATB). Due to the design of the vessel, it would be difficult and impractical to build a supporting structure that would put the side lights within 3.5′ from the greatest breadth of the Vessel, as required by Annex I, paragraph 3(b) of the 72 COLREGS and Annex I, Section 84.05(b), of the Inland Rules Act.

The Certificate of Alternative Compliance allows for the placement of the side lights to deviate from requirements set forth in Annex I, paragraph 3(b) of 72 COLREGS, and Annex I, paragraph 84.05(b) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: June 11, 2009.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–20243 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0432]

Certificate of Alternative Compliance for the Offshore Supply Vessel CHARLES M CALLAIS II

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel CHARLES M CALLAIS II as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on May 15, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at

the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0432 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Division, U.S. Coast Guard, telephone 504–671-2153. 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:

Background and Purpose

The offshore supply vessel CHARLES M CALLAIS II will be used for offshore supply operations. The horizontal distance between the forward and aft masthead lights may be 22′-5″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: June 11, 2009.

J. W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–20244 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundredth Sixty-ninth Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on September 14, 2009.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. in the meeting room at Headquarters, 99 Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting. (June 19, 2009).
3. Reports of Officers.
4. Reports of Subcommittees.
5. Superintendent's Report.
   - Update on Dune Shacks.
   - Improved Properties/Town Bylaws.
   - Wind Turbines/Cell Towers.
   - Highlands Center Update.
   - Alternate Transportation funding.
   - Other construction projects.
   - Land Protection.
6. Old Business.
7. New Business.
   - Ocean initiatives.
8. Date and agenda for next meeting.
9. Public comment; and
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: August 3, 2009.

George E. Price, Jr.,

Superintendent.

[FR Doc. E9–20133 Filed 8–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 8, 2008. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 8, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

IOWA

Black Hawk County

Fowler Company Building, The, 226–228 E. 4th St., Waterloo, 09000712

Dubuque County

Schrup, John and Marie (Palen) Farmstead Historic District, 10086 Lake Eleanor Rd., Dubuque, 09000713

Polk County

Iowa Comission for the Blind Building, 524 4th St., Des Moines, 09000714

Poweshiek County

Kent Union Chapel and Cemetery, 3386 V18 Rd., Brooklyn, 09000715

MASSACHUSETTS

Berkshire County

Tyringham Cemetery, Church Rd., Tyringham, 09000716

Suffolk County

Fairview Cemetery, 45 Fairview Ave., Boston, 09000717

MISSISSIPPI

Coahoma County

Clarksdale Historic District Roughly bounded by the Sunflower R., 10th St., DeSoto Ave. & Clark St., Clarksdale, 09000763

MISSOURI

Adair County

Travelers Hotel, 301 W. Washington St., Kirksville, 09000718

St. Louis Independent City

Grand—Bates Suburb Historic District, Roughly bounded by Bates St., Grand Blvd., I–55, Alaska Ave., Fillmore & Iron Sts., St. Louis (Independent City), 09000719

NEW YORK

Franklin County

Wilder Homestead, Stacy Rd., Malone, 09000720

Montgomery County

Kilts Farmstead, Address Restricted, Stone Arabia, 09000721

New York County

Trinity Lutheran Church of Manhattan, 164 W. 100th St., New York, 09000722

Saratoga County

Bullard Block, 90–98 Broad St., Schuylerville, 09000723

Seneca County

Lay, Hiram, Cobblestone Farmhouse, (Coal Company Stores in McDowell County MPS) 1145 Mays Point Rd., Tyre, 09000724

NORTH CAROLINA

Robeson County

Surles, W.R. Memorial Library, 105 W. Main St., Proctorville, 09000725

VIRGINIA

Danville Independent City

Hylton Hall, 700 Lanier Ave., Danville (Independent City), 09000726

Goochland County

Oak Grove, 664 Manakin Rd., Manikan-Sabot, 09000727

Highland County

Crab Run Lane Truss Bridge, VA 645 over Crab Run, McDowell, 09000728

Hopewell Independent City

Hopewell High School Complex, 1201 City Point Rd., Hopewell (Independent City), 09000729

Richmond Independent City

Ninth Street Office Building, 202 N. 9th St., Richmond (Independent City), 09000730

West Franklin Street Historic District (Boundary Increase),

900 blk. West Grace St., 4000 blk. N. Harrison St., 300 blk. Shafer St., Richmond (Independent City), 09000731

WASHINGTON

King County

Snoqualmie Falls Snoqualmie R., between mi. 40 & 41 Snoqualmie, 92000784

Thurston County

Millersylvania State Park, 12245 Tilley Rd., Olympia, 09000732

WEST VIRGINIA

Jefferson County

South Charles Town Historic District, S. George, S. Mildred, S. Samuel, & S. Church Sts., Charles Town, 09000733

[FR Doc. E9–20298 Filed 8–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from June 22, to June 26, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: August 19, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

CONNECTICUT

Fairfield County

Silvermine Center Historic District, Roughly centered on Silvermine & Perry Aves., Norwalk, 07001441, LISTED, 6/23/09

GEORGIA

Fulton County

Collier Heights Historic District, Bounded approximately by Hamilton E. Holmes Dr. on the E., Donald Lee Hollowell Pkwy. on the N., US 285 on the W, US 20, Atlanta, 09000457, LISTED, 6/23/09

GEORGIA

Polk County

Rockmart Downtown Historic District, Roughly bounded by Water, Beauregard, Narble, and Elm Sts., Rockmart, 09000458, LISTED, 6/24/09

INDIANA

Clark County

Ohio Falls Car and Locomotive Company Historic District, 300 Missouri Ave., Jeffersonville, 09000494, DETERMINED ELIGIBLE, 6/25/09

INDIANA

Vanderburgh County

USS LST 325 (tank landing ship), 840 LST Dr., Evansville, 09000434, LISTED, 6/24/09

MICHIGAN

Jackson County

Hebrew Cemetery, 420 N.W. Ave., Jackson, 09000474, LISTED, 6/24/09

MICHIGAN

Kent County

Alten, Mathias., House and Studio, 1593 E. Fulton St., Grand Rapids, 08001102, LISTED, 6/23/09

MICHIGAN

Newaygo County

Croton Dam Mound Group, Address Restricted, Croton vicinity, 08000846, LISTED, 6/23/09

PENNSYLVANIA

Berks County

Douglass, George, House, 19 Old Philadelphia Pike, Amity Township, 09000462, LISTED, 6/25/09

PENNSYLVANIA

Lackawanna County

Madison, James, School, 528 Quincy Ave., Scranton, 09000463, LISTED, 6/24/09 (Educational Resources of Pennsylvania MPS)

[FR Doc. E9–20297 Filed 8–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Acknowledgment of the Brothertown Indian Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: The Department of the Interior (Department) gives notice that the Acting Principal Deputy Assistant Secretary—Indian Affairs (PDAS–IA) proposes to determine that the petitioner known as the Brothertown Indian Nation is not an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy all seven of the criteria set forth in the applicable regulations, and, therefore, does not meet the requirements for a government-

to-government relationship with the United States.

DATES: Comments on this proposed finding (PF) are due on or before February 22, 2010.

ADDRESSES: Comments and requests for a copy of the summary evaluation of the evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., Mail Stop 34B–SIB, Washington, DC 20240. Interested or informed parties must send a copy of their comments to the petitioner at Brothertown Indian Nation c/o Richard Schadewald, 82 South Macy Street, P.O. Box 2206, Fond du Lac, Wisconsin 54936–2206.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 83.10(h), the Department gives notice that the PDAS–IA proposes to determine that the Brothertown Indian Nation (BIN, Petitioner #67), c/o Richard Schadewald, 82 South Macy Street, P.O. Box 2206, Fond du Lac, Wisconsin 54936–2206, is not an Indian tribe within the meaning of Federal law. This notice is based on a determination that the petitioner does not satisfy all seven of the criteria set forth in part 83 of title 25 of the *Code of Federal Regulations* (25 CFR part 83), specifically criteria at 83.7(a), 83.7(b), 83.7(c), 83.7(e), and 83.7(g), and therefore does not meet the requirements for a government-to-government relationship with the United States.

The Department publishes this notice in the exercise of authority that the Secretary of the Interior delegated to the Assistant Secretary—Indian Affairs (AS–IA) by 209 DM 8. The AS–IA delegated authority to sign some Federal acknowledgment findings, including this PF, to the PDAS–IA effective June 4, 2009.

A group known as the Brothertown Indian Nation (BIN), under the name of Brotherton Indians of Wisconsin (BIW), submitted a letter of intent to petition for Federal acknowledgment as an Indian tribe to the AS–IA. The Department received the letter of intent on April 15, 1980. The Department designated the BIW as Petitioner #67. The BIW submitted its first documentation that included a narrative as well as some documents outlined in the BIW petitioner's narrative. The Department received this material on February 7, 1996. The group claimed to descend from the historical Brothertown Indian tribe of Wisconsin, which evolved from the Brothertown Indian tribe of New York State when a large portion of the original tribe moved from New York to Wisconsin. At an earlier time, portions of several historical Indian tribes of Rhode Island, Connecticut, and Long Island had combined to form the Brothertown Indian tribe of New York. The historical Brothertown Indian tribe of Wisconsin occupied a reservation created for it in Wisconsin by the United States Senate in 1832. It was last acknowledged by the United States Government in 1839 when the tribe, as provided in an Act of 1839 and at its own request, divided its reservation lands among its members and became citizens. As a result, the tribe's Federal relationship was terminated.

The Department conducted an initial review of the petition and determined the petitioner was ready for consideration and placed the BIW petitioner on the ''ready, waiting for active consideration list'' on February 28, 1996. In 1995 and 1998, the BIW petitioner submitted additional petition documents on three different occasions. The BIW notified the Department on January 4, 2005, that the group changed its name officially to Brothertown Indian Nation (BIN) on November 20, 2005.

The Department placed the BIN petitioner on active consideration for the PF on June 23, 2008, and received two submissions of additional petitioner documents from the group during the 60 days following, as allowed by the ''directive'' of March 31, 2005, and a letter to the petitioner of June 20, 2008 (70 FR 16513). The Department will consider any additional material that it received after the submission deadline of August 22, 2008, for the final determination (FD), pursuant to that directive the Department published on March 31, 2005 (70 FR 16515).

The acknowledgment process is based on the regulations at 25 CFR part 83. Under these regulations, the petitioner has the burden to present evidence that it meets the seven mandatory criteria in section 83.7. The BIN petitioner does not satisfy criteria 83.7(a), 83.7(b), 83.7(c), 83.7(e), and 83.7(g). The BIN petitioner meets the requirements of criteria 83.7(d) and 83.7(f).

If ''substantial evidence'' demonstrates the petitioner had ''unambiguous'' previous Federal acknowledgment as an Indian tribe, then the requirements of the acknowledgment criteria in section 83.7 are modified by the provisions of section 83.8(d). The available record indicates that the Senate proviso to the Treaty of 1831, the Treaty of 1832, and the Act of 1839 constitute unambiguous previous Federal acknowledgment of a Brothertown Indian tribe in Wisconsin. Evidence that a predominant portion of the petitioner's members descend from the previously acknowledged Indian tribe and some evidence in the record of group activities by Brothertown descendants since 1839 allow the petitioner to advance a claim to have evolved from the previously acknowledged Indian tribe. Therefore, the Brothertown petitioner is evaluated on the basis of whether or not it meets the seven mandatory criteria in section 83.7 as modified by section 83.8(d), from last Federal acknowledgment in 1839 until the present.

Criterion 83.7(a) requires that external observers have identified the petitioner as an American Indian entity on a substantially continuous basis since 1900. As modified by section 83.8(d)(1), the petitioner must be identified since last Federal acknowledgment, which for the Brothertown petitioner is 1839. The evidence in the record demonstrates that external observers identified a historical Brothertown group from 1839 until 1855. Between 1855 and 1981, outside observers periodically identified a Brothertown Indian entity, but because these periodic identifications are separated by long periods of time in which the petitioner or its members' ancestors were not identified as an Indian entity, the petitioner does not satisfy the standard of ''substantially continuous'' identification as required by the regulations. The petitioning group has been identified as an American Indian entity since 1981. However, the petitioner has not been identified on a substantially continuous basis since 1839. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning group has comprised a distinct community since historical times. As modified by section 83.8(d)(2), the petitioner must demonstrate only that a predominant portion of the petitioning group comprises a distinct community ''at present,'' which for this case is considered to be the period since the petitioner formally organized in 1980. The character of the current group appears to be that of a highly dispersed descent group with some active members. There is no available evidence in the record that an informal community existed in 1980 composed of the same people currently enrolled with the petitioner. Most members who have strong social ties to other members formed these relationships through the activities of the group's formal

organization. Outside of these active participants, few members of the group have strong social ties to each other. For the period from 1980 to 2009, there is insufficient evidence that a predominant portion of the petitioning group's members regularly associate with each other or that the petitioner's members comprise a distinct community. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(b) as modified by section 83.8(d)(2).

Criterion 83.7(c) requires that the petitioning group has maintained political influence over its members as an autonomous entity since historical times. The evidence in the record does not demonstrate that authoritative, knowledgeable external observers identified leaders or a governing body of the petitioning group on a substantially continuous basis since the date of last Federal acknowledgment in 1839. Therefore, the petitioner does not meet the requirements of criterion 83.7(c) as modified by section 83.8(d)(3) for the historical period prior to ''at present.'' Alternatively under the provisions of section 83.8(d)(5), the evidence in the record is insufficient to demonstrate that the BIN petitioner or any group antecedent to it maintained political influence or authority over its members from 1839 until the group's establishment as a formal organization in 1980. After 1980, when the current petitioner organized, its governing body has provided some services for its members, but this activity is of recent origin and appears to be the result of the group's establishment as a formal organization. The petitioner has not demonstrated it maintained political influence or authority over most of its members at any time since 1839. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(c).

Criterion 83.7(d) requires that the petitioner provide a copy of its governing document including its membership criteria. The petitioner submitted a copy of its governing document which includes its membership criteria. Therefore, the BIN petitioner meets the requirements of criterion 83.7(d).

Criterion 83.7(e) requires that the petitioner's members descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. The June 24, 2008, BIN membership list includes 3,137 living members, both adults and minors. The evidence in the record shows that almost all of the petitioner's members claim descent from individuals who were members of the historical Brothertown Indian tribe of Wisconsin in 1839. However, this PF finds that only 51 percent (1,593 of 3,137) of BIN members have demonstrated descent from an individual known to be a member of the historical Brothertown Indian tribe of Wisconsin. The petitioner has not demonstrated for this PF that its members descend from an historical Indian tribe. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(e).

Criterion 83.7(f) requires that the petitioner's membership be composed principally of persons who are not members of another federally recognized Indian tribe. A review of the membership rolls of those Indian tribes in Wisconsin and Minnesota that would most likely include the BIN petitioner's members revealed that the petitioner's membership is composed principally of persons who are not members of any federally acknowledged North American Indian tribe. Therefore, the BIN petitioner meets the requirements of criterion 83.7(f).

Criterion 83.7(g) requires that the petitioner not be subject to congressional legislation that has terminated or forbidden the Federal relationship. Congress stated in the Act of 1839 that the Brothertown Indian tribe's ''rights as a tribe'' recognized by the Federal Government, and specifically its power to act as a political and governmental entity, would ''cease and determine,'' that is, end and be limited permanently. Congress in this Act brought Federal recognition of the relationship with the Brothertown Indian tribe of Wisconsin to an end. By expressly denying the Brothertown of Wisconsin any Federal recognition of a right to act as a tribal political entity, Congress has forbidden the Federal Government from acknowledging the Brothertown as a government and from having a government-to-government relationship with the Brothertown as an Indian tribe. Congress has both expressly ended and forbidden the Federal relationship for this petitioner. Therefore, the BIN petitioner does not meet the requirements of criterion 83.7(g).

Based on this preliminary factual determination, the Department proposes not to extend Federal acknowledgment as an Indian tribe to the petitioner known as the Brothertown Indian Nation.

A report summarizing the evidence, reasoning, and analyses that are the basis for the PF will be provided to the petitioner and interested parties, and is available to other parties upon written request as provided by 25 CFR 83.10(h). Requests for a copy of the summary evaluation of the evidence should be addressed to the Federal Government as instructed in the **ADDRESSES** section of this notice.

Publication of this notice of the PF in the **Federal Register** initiates a 180-day comment period during which the petitioner and interested and informed parties may submit arguments and evidence to support or rebut the evidence relied upon in the PF. Comments on the PF should be addressed to both the petitioner and the Federal Government as required by 25 CFR 83.10(i) and as instructed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

The regulations, 25 CFR 83.10(k), provide the petitioner a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period. After the expiration of the comment and response periods described above, the Department will consult with the petitioner concerning establishment of a schedule for preparation of the FD. The Acting PDAS–IA will publish the FD of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(l), at a time that is consistent with that schedule.

The Acting PDAS–IA George T. Skibine approved the Proposed Finding Against Acknowledgment of the Brothertown Indian Nation (Petitioner #67) and approved the publication of this **Federal Register** notice.

Dated: August 17, 2009.

George T. Skibine,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E9–20285 Filed 8–21–09; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW144810]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from

Anadarko Petroleum Corporation and Lance Oil & Gas Company for noncompetitive oil and gas lease WYW144810 for land in Johnson County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Carmen E. Lovett, Land Law Examiner, at (307) 775–6160.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144810 effective April 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Carmen E. Lovett,

Land Law Examiner.

[FR Doc. E9–20324 Filed 8–21–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW144809]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from Anadarko Petroleum Corporation and Lance Oil & Gas Company for noncompetitive oil and gas lease WYW144809 for land in Johnson County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Carmen E. Lovett, Land Law Examiner, at (307) 775–6160.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144809 effective April 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Carmen E. Lovett,

Land Law Examiner.

[FR Doc. E9–20325 Filed 8–21–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW144811]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(2), the Bureau of Land Management (BLM) received a petition for reinstatement from Anadarko Petroleum Corporation and Lance Oil & Gas Company for noncompetitive oil and gas lease WYW144811 for land in Johnson County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Carmen E. Lovett, Land Law Examiner, at (307) 775–6160.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 18⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144811 effective April 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Carmen E. Lovett,

Land Law Examiner.

[FR Doc. E9–20322 Filed 8–21–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZP020–09–L54100000–FR0000–LVCLA09A5120; AZA–33964]

Notice of Realty Action: Application for Conveyance of Federal Mineral Interests, Cochise County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The surface owner of the land described in this notice, containing approximately 320 acres, has filed an application for the purchase of the federally-owned mineral interests in the land. Publication of this notice temporarily segregates the mineral interests from appropriation under the public land laws, including the mining laws.

DATES: Interested persons may submit written comments to the Bureau of Land Management (BLM) at the address stated below. Comments must be received no later than October 8, 2009.

ADDRESSES: Bureau of Land Management, Phoenix District, 21605 North 7th Avenue, Phoenix, Arizona 85027. Detailed information concerning this action, including appropriate environmental information, is available for review at this address.

FOR FURTHER INFORMATION CONTACT: Matthew Magaletti, Lands and Realty Specialist, at the above address or at 623–580–5590.

SUPPLEMENTARY INFORMATION: The surface owner of the following described land has filed an application pursuant to Section 209 of the Federal Land Policy and Management Act of 1976, 43 United States Code (U.S.C.)

1719(b), for the purchase and conveyance of the federally-owned mineral interests in the land:

Gila and Salt River Base and Meridian

T. 15 S., R. 22 E.,
Sec. 28, SE¼;
Sec. 34, NW¼;

The area described contains 320 acres, more or less, in Cochise County.

Effective immediately, the BLM will process the pending application in accordance with the regulations stated in 43 Code of Federal Regulations (CFR) Part 2720. Written comments concerning the application must be received no later than the date specified above in this notice. The purpose of a purchase and conveyance is to allow consolidation of surface and subsurface minerals ownership (1) where there are no known mineral values or (2) in those instances where the Federal mineral interest reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

On August 24, 2009 the mineral interests owned by the United States in the above described land will be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of a patent or deed of such mineral interests; upon final rejection of the mineral conveyance application; or August 24, 2011, whichever occurs first.

Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must clearly state this at the beginning of your written comment. 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. The BLM will honor requests for confidentiality on a case-by-case basis 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. All persons who wish to present comments, suggestions, or objections in connection with the pending application may do so by writing to Teresa A. Raml, Phoenix District Manager, at the above address.

(Authority: 43 CFR 2720.1–1(b))

Teresa A. Raml,

District Manager.

[FR Doc. E9–20251 Filed 8–21–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Federal Water Pollution Control Act

Notice is hereby given that on August 13, 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 the municipality the City of West Point, Nebraska, resolves the United States' and State of Nebraska's claims against the City under sections 307 and 309 of the Federal Water Pollution Control Act (Clean Water Act). Under the terms of the Consent Decree, the City of West Point shall pay a civil penalty to the United States of $100,000 and a civil penalty to the State of $50,000. In addition, the City shall contribute $50,000 to the the Nebraska Attorney General's Environmental Protection Fund.

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 $5.50 (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. E9–20279 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0259]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Bureau of Justice Assistance application form: Medal of Valor.

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 74, Number 117, page 29238, on June 19, 2009] allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection for which approval will expire on XXXXXXX2012.

(2) *Title of the Form/Collection:* Public Safety Officer Medal of Valor.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:*

Primary: State, local and tribal government agencies within the United States and its territories.

Abstract: The Bureau of Justice Assistance, a component of the Office of Justice Program, Department of Justice, administers the Public Safety Officer's Medal of Valor. One a year, the President of the United States of America may award, and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Officer Medal of Valor is the highest national award given to a public safety officer in recognition of their bravery and altruistic acts of valor to protect and save the lives of others.

Nomination(s) for this award is voluntary. Nominations are received through the Internet, or postal mail.

The Medal of Valor program is governed by F1.R.802, the Public Safety Officer Medal of Valor Act of 2001.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 182 applicants under the Medal of Valor approximately 25 minutes to complete the application/nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the certification form is 75.83 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–20165 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0084]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 117, page 29239 on June 19, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6NIA (5330.3D). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* none. *Abstract:* This information collection is needed to determine if the firearms or ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: There will be an estimated 15,000 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 7,500 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 19, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–20304 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0092]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Voluntary magazine questionnaire for agencies/entities who store explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 117, page 29238–29239, on June 19, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Voluntary Magazine Questionnaire For Agencies/Entities Who Store Explosive Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. *Other:* None. *Abstract:* The information from the questionnaires will be used to identify the number and locations of public explosives storage facilities including those facilities used by State and local law enforcement. The information will also help ATF account for all explosive materials during emergency situations, such as the recent hurricanes in the Gulf, forest fires, or other disasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,000 respondents, who will complete the questionnaire within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 500 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 19, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–20302 Filed 8–21–09; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0270]

Bureau of Justice Assistance; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Bureau of Justice Assistance application form: Southwest Border Prosecution Initiative

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume nn, Number nnn, page nnnnn on month, day, year,] allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Department of Justice Desk Officer, Washington, DC 20530.

Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be

submitted to M. Berry, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC., 20531 via e-mail at *M.A.Berry@ojp.usdoj.gov* or by facsimile at (202) 305–1367.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:*

(2) *The title of the form/collection:* Bureau of Justice Assistance Application Form for the Southwest Border Prosecution Initiative.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal government.

Other: None.

Abstract: The Southwest Border Prosecutor Initiative was enacted in FY 2002 to reimburse state, county, parish, or municipal governments for the costs associated with the prosecution of criminal cases declined by local U.S. Attorneys. Each year, hundreds of criminal cases resulting from federal arrests are referred to local prosecutors to handle when the cases fall below certain monetary, quantity, or severity thresholds. This places additional burdens on local government resources that are already stretched by the demands of prosecuting violations of local and state laws. This program provides funds to eligible jurisdictions in the four southwest border states, using a uniform payment-per-case basis for qualifying federally initiated and declined-referred criminal cases that were disposed of after October 1, 2001. Up to 220 eligible jurisdictions may apply. This includes county governments and the four state governments in Arizona, California, New Mexico, and Texas.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that no more than 220 respondents will apply. Each application takes approximately 60 minutes to complete and is submitted 4 times per year (quarterly).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 880 hours (880 applications (220 × 4 times a year) × 60 minutes per application = 52,800/60 minutes per hour = 880 burden hours).

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20530.

Dated: August 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–20267 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Information Collection 1117–0046]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Self-Certification, Training and Logbooks for Regulated Sellers of Scheduled Listed Chemical Products

ACTION: 30-day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 114, page 28526, on June 16, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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.

Overview of Information Collection 1117–0046

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Self-Certification, Training and Logbooks for Regulated Sellers of Scheduled Listed Chemical Products.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 597.

Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: CMEA mandates that retail sellers of scheduled listed chemical products maintain a written or electronic logbook of sales, retain a record of employee training, and complete a self-certification form verifying the training and compliance with CMEA provisions regarding retail sales of scheduled listed chemical products.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 64,000 persons are self-certified. It is estimated that 410,000 new employees of regulated sellers receive training regarding the requirements of the Combat Methamphetamine Epidemic Act of 2005 due to annual employee turnover. It is estimated that there are 25.5 million transactions involving the sale of scheduled listed chemical products annually. The table below shows the activities and time burdens associated with this collection.

Activity	Unit burden hour	Number of activities	Total burden hours
Training record	0.05 hour (3 minutes)	410,000	20,500
Self-certification	0.25 hour (15 minutes)	64,000	16,000
Transaction record	0.033 hour (2 minutes)	25,500,000	850,000
Customer time	0.033 hour (2 minutes)	25,500,000	850,000
Total			1,736,500

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 1,736,500 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–20266 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0026]

Criminal Justice Information Services Division; National Instant Criminal Background Check System Section Agency Information Collection Activities: Existing Collection, Comments Requested

ACTION: 30-day notice of information collection under review: Approval of an existing collection; Federal Firearms Licensee (FFL) Enrollment/National Instant Criminal Background Check System (NICS) Electronic Check (E-Check) Enrollment Form; Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities Under the National Instant Criminal Background Check System (NICS) Form.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume, Number, Pages) on (DATE), allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2009. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), § 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to the OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval of an existing collection.

Title of the Forms: Federal Firearms Licensee (FFL) Enrollment/National Instant Criminal Background Check System (NICS) Electronic Check (E-Check) Enrollment Form; Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities under the National Instant Criminal Background Check System (NICS) Form.

(2) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0026.

Sponsor: Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

(3) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Any Federal Firearms Licensee (FFL) or State Point-of-Contact (POC) requesting access to conduct National Instant Criminal Background Check System (NICS) Checks telephonically or by the Internet through the NICS Electronic Check (E-Check).

Brief Abstract: The Brady Handgun Violence Prevention Act of 1993,

required the United States Attorney General to establish a national instant criminal background check system that any Federal Firearms Licensee (FFL) may contact, by telephone or by other electronic means for information to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate state or federal law. Information pertaining to licensees who may contact the NICS is being collected to manage and control access to the NICS and to the NICS E-Check, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

It is estimated that 500 Federal Firearms Licensees (FFLs) enroll with the NICS per month for a total of 6,000 enrollments per year. The average response time for reading the directions for the Federal Bureau of Investigation National Instant Criminal Background Check System (NICS) Federal Firearms Licensee (FFL) Enrollment/NICS Electronic Check (E-Check) Enrollment Form is estimated to be two minutes; time to complete the form is estimated to be three minutes; and the time it takes to assemble, mail, or fax the form to the FBI is estimated to be three minutes, for a total of eight minutes.

The average hour burden for this specific form is 6,000 × 8 minutes/60 = 800 hours. The Federal Firearms Licensee (FFL) Officer/Employee Acknowledgment of Responsibilities Under the National Instant Criminal Background Check System (NICS) Form takes approximately three minutes to read the responsibilities and two minutes to complete the form, for a total of five minutes. The average hour burden for this specific form is 6,000 × 5 minutes/60 = 500 hours.

The accompanying letter mailed with the packet takes an additional two minutes to read which would be 6,000 × 2 minutes/60 = 200 hours.

The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be 6,000 × 15/60 = 1,500 hours.

(5) *An estimate of the total public burden (in hours) associated with the collection:*

The entire process of reading the letter and completing both forms would take 15 minutes per respondent. The average hour burden for completing both forms and reading the accompanying letter would be 6,000 × 15/60 = 1,500 hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 18, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–20167 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Spirit Pharmaceuticals, L.L.C.; Dismissal of Proceeding

On June 22, 2007, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Suspend Shipment (hereinafter, Suspension Order) to Spirit Pharmaceuticals, L.L.C. (Respondent), of Fairless Hills, Pennsylvania. Suspension Order at 1. The Order suspended Respondent's proposed importation of 2,000 kilograms of ephedrine hydrochloride from Emmellen Biotech Pharmaceuticals, Ltd., of Mumbai, India, on the ground that the product ''may be diverted'' to the illicit manufacture of methamphetamine, a schedule II controlled substance. *Id.* at 3; *see also* 21 U.S.C. 971(c).

The Suspension Order alleged that Respondent had identified AAA Pharmaceutical, Inc. (AAA), on its Import Declaration (DEA Form 486) as the customer for the product. *Id.* at 2. The Order also alleged that in a telephone conversation, a ''representative of AAA stated that the ephedrine was to be manufactured into tablets, packaged, and sold to Novelty, Inc.'' *Id.* Finally, the Order alleged that Novelty, Inc., distributed over-the-counter products containing ephedrine to entities such as gas stations and convenience stores, *id.* at 3, that these outlets sell ephedrine products ''in quantities that exceed what would be necessary to meet legitimate demand,'' and that the products ''are often sold to persons for use in the illicit manufacture of methamphetamine.'' *Id.* at 2.

Neither Respondent nor AAA requested a hearing on the allegations.[1] The record was then forwarded to me for final agency action.

On January 17, 2008, I also issued an Order to Show Cause and Immediate Suspension of Registration to Novelty.[2] On September 3, 2008, following a hearing, I ordered the revocation of Novelty's registration as a distributor of list I chemicals and the denial of any applications it had pending before the Agency. *See Novelty Distributors, Inc.,* 73 FR 52689, 52704 (2008).

Shortly thereafter, Novelty filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia Circuit. On June 22, 2009, the Court of Appeals issued a Per Curiam Order denying Novelty's Petition for Review. *See Novelty, Inc.,* v. *DEA,* 2009 WL 1930184, *1 (D.C. Cir. June 22, 2009). Moreover, on July 28, 2009, the Court of Appeals denied Novelty's Petitions for Rehearing and Rehearing En Banc. *See Novelty, Inc.,* v. *DEA,* No. 08–1296 (D.C. Cir. Filed July 28, 2009) (order denying rehearing and order denying rehearing en banc).

As noted above, the Suspension Order was based on Respondent's intended distribution of the ephedrine to AAA, which sought the ephedrine for the purpose of manufacturing ephedrine products for Novelty. The Court of Appeals, however, has now upheld the Agency's Final Order revoking Novelty's registration. Because Novelty lacks authority under Federal law to distribute ephedrine products, I conclude that this case is now moot. *Cf. Board of License* Comm'rs v. *Pastore,* 469 U.S. 238, 239 (1985) (per curiam). Accordingly, this proceeding is dismissed.

It is so ordered.

Dated: August 12, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–20335 Filed 8–21–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 18, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of

[1] Novelty did, however, request a hearing on the Suspension Order. On August 17, 2007, I denied Novelty's request. *See* 72 FR 49316 (2007).

[2] Because Novelty's registration was immediately suspended, my review of the Order to Suspend Shipment was held in abeyance pending the issuance of the final order in Novelty and judicial review of it.

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 this 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—Employee Benefits Security Administration (EBSA), 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: Employee Benefits Security Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Notice Requirements of the Health Care Continuation Coverage Provisions.

OMB Control Number: 1210–0123.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 593,000.

Total Estimated Annual Burden Hours: 0.

Total Estimated Annual Costs Burden (excludes hourly wage costs): $34,500,473.

Description: On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111–5. ARRA includes a requirement that the Secretary of Labor (the Secretary), in consultation with the Secretaries of the Treasury and Health and Human Services, develop model notices. These models are for use by group health plans and other entities that, pursuant to ARRA, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. For additional information, see related notice published at Vol. 74 FR 24040 on May 22, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–20190 Filed 8–21–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 18, 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 website at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (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—ESA, 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: Employment Standards Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: Health Insurance Claim Form.

OMB Control Number: 1215–0055.

Agency Form Number: OWCP–1500.

Affected Public: Private Sector, Businesses and other for-profits.

Total Estimated Number of Respondents: 749,104.

Total Estimated Annual Burden Hours: 359,359.

*Total Estimated Annual Costs Burden (does not include hour costs): $*0.

Description: Form OWCP–1500 is used by OWCP and contractor bill payment staff to process bills for medical services provided by medical professionals other than medical services provided by hospitals, pharmacies and certain other medical providers. OWCP is adding the data elements National Provider Identifier (NPI) and taxonomy number, which will be 32a and 33a on the revised OWCP–1500. This information is required to pay health care providers for services rendered to injured employees covered under the Office of Worker's Compensation Programs—administered programs. Appropriate payment cannot be made without documentation of the medical services that were provided by the health care provider that is billing OWCP. The information obtained to complete claims under these programs is used to identify the patient and determine their eligibility. It is also used

to decide if the services and supplies received are covered by these programs and to assure that proper payment is made. For additional information, see related notice published at Volume 74 FR 10778 on March 12, 2009.

Agency: Employment Standards Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Authorization for Release of Medical Information (Black Lung Benefits).

OMB Control Number: 1215–0057.

Agency Form Number: CM–936.

Affected Public: Individuals and households.

Total Estimated Number of Respondents: 900.

Total Estimated Annual Burden Hours: 75.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The CM–936 is used to obtain the black lung claimant's authorization for the Division of Coal Mine Workers' Compensation to request medical evidence in support of the black lung claim. For additional information, see related notice published at Volume 74 FR 15005 on April 2, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–20272 Filed 8–21–09; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–074)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a partially exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license to practice the invention described and claimed in NASA Case Number LAR–16575–1 entitled ''Device and Method for Connections Made Between a Crimp Connector and Wire,'' U.S. Patent Number 7,181,942, to Sonicrimp, LLC having its principal place of business in Madison, Wisconsin. The field of use is limited to automated crimp equipment applications. The patent rights have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681; (757) 864–9260 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Helen M. Galus, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 141, Hampton, VA 23681; (757) 864–3227; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/.*

Dated: August 18, 2009.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. E9–20257 Filed 8–21–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Electronic Records Archives

AGENCY: National Archives and Records Administration.

ACTION: Notice of charter renewal.

SUMMARY: This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Electronic Records Archives. In accordance with Office of Management and Budget (OMB) Circular A–135, OMB approved the inclusion of the Advisory Committee on Electronic Records Archives in NARA's ceiling of discretionary advisory committees.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka, 301–837–1782.

SUPPLEMENTARY INFORMATION: NARA has determined that the renewal of the Advisory Committee on Electronic Records Archives is in the public interest due to the expertise and valuable advice the Committee members provide on technical, mission, and service issues related to the Electronic Records Archives (ERA). NARA will use the Committee's recommendations on issues related to the development, implementation, and use of the ERA system. NARA's Committee Management Officer (CMO) is Mary Ann Hadyka.

Dated: August 19, 2009.

Adrienne C. Thomas,

Acting Archivist of the United States.

[FR Doc. E9–20392 Filed 8–21–09; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 6, 2009, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on August 17, 2009 to:

Wayne Z. Trivelpiece, Permit No. 2010–003;

Scott Borg, Permit No. 2010–005;

Mahlon C. Kennicutt, II, Permit No. 2010–006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E9–20180 Filed 8–21–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0368; EA–06–140]

Confirmatory Order Modifying License (Effective Immediately)

In the Matter of:	
United States Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah Kentucky	Docket No. 070–07001 Certificate No. GDP–1
United States Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Piketon, Ohio	Docket No. 070–07002 Certificate No. GDP–2
United States Enrichment Corporation, Inc., American Centrifuge Lead Cascade Facility, Piketon, Ohio	Docket No. 070–07003 License No. SNM–7003
United States Enrichment Corporation, Inc., American Centrifuge Plant, Piketon, Ohio	Docket No. 070–07004 License No. SNM–2011

I

USEC Inc. is the holder of Facility Operating License Nos. SNM–7003 and SNM–2011 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 70. License SNM–7003 was issued on February 24, 2004, and amended on October 30, 2008. License No SNM–2011 was issued on April 13, 2007, and amended on July 14, 2009. The licenses authorize the operation of the American Centrifuge Plant and the American Centrifuge Lead Cascade Facility in accordance with the provisions therein. These facilities are located in Piketon, OH.

The United States Enrichment Corporation (USEC), a subsidiary of USEC Inc., is the holder of NRC Certificates of Compliance (COC) No. GDP–1 and GDP–2 issued by the NRC pursuant to 10 CFR Part 76 on November 26, 1996, and renewed on December 22, 2008. The COC are set to expire on December 31, 2013. The certificates authorize USEC to operate the Paducah Gaseous Diffusion Plant (Paducah), located near Paducah, Kentucky, and the Portsmouth Gaseous Diffusion Plant (Portsmouth), located in Piketon, Ohio. The certificates also authorize USEC to receive, and other NRC licensees to transfer to USEC, byproduct material, source material, or special nuclear material to the extent permitted under the COC.

This Confirmatory Order is the result of an agreement reached during the alternative dispute resolution (ADR) mediation session conducted on May 29, 2009.

II

By letter dated January 9, 2009, the NRC informed USEC of the identification of an apparent violation of 10 CFR 76.7, ''Employee protection.'' The apparent violation was based on the United States Department of Labor (DOL) Administrative Review Board's (ARB's) August 19, 2008, Final Decision and Order (ARB Case Nos. 06–055, 06–058, and 06–119) affirming a DOL Administrative Law Judge's (ALJ) findings of fact and conclusions. Previously, on January 27, 2006, the DOL ALJ issued a Proposed Decision and Order (ALJ Case No. 2004–ERA–001), concluding that USEC retaliated against a former quality control manager at Paducah in violation of Section 211 of the Energy Reorganization Act of 1974, as amended (the ERA). USEC denied that it violated the ERA and appealed the ARB decision to the United States Court of Appeals for the Sixth Circuit. Although, at this time, there is no indication that the impact of the apparent violation is not isolated, the NRC is concerned that, in the absence of appropriate management actions, the ARB decision may ultimately have a broader impact on Paducah's safety-conscious work environment (SCWE).

In its January 9, 2009, letter to USEC, the NRC offered USEC the option of either providing a written response to the apparent violation, or requesting ADR through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement and resolving any differences regarding a dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's letter of January 9, 2009, USEC chose to participate in ADR with the NRC. During the ADR session a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

I. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to engage a third party to conduct an independent assessment of the SCWE at USEC's Paducah site. Through this assessment, the Certificatee will benchmark the effectiveness of the key elements of its SCWE initiatives; look at industry best practices; modify or further develop the SCWE program; and develop an assessment tool to periodically evaluate the effectiveness of USEC's Paducah SCWE program.

II. Within 90 calendar days after completion of the assessment as referenced in paragraph I above, USEC shall make available to the NRC onsite:

(a) A description of the tools/methods used to conduct the assessment including any survey questions;

(b) The results of the assessment and USEC's analysis of the results; and,

(c) The proposed actions, if any, USEC will take to address the results of the assessment in order to ensure that a healthy SCWE exists at USEC's Paducah site.

III. No later 3 three years after the independent assessment performed in paragraph I above, USEC shall perform a second independent assessment of the SCWE at USEC's Paducah site to determine the effectiveness of the SCWE program

IV. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review and/or revise as appropriate, annual SCWE training (that includes case studies). USEC agrees to train the following management staff on SCWE principles within 15 months of the date of the Confirmatory Order and provide refresher training annually thereafter:

(a) USEC Headquarters personnel, to include employees designated in the Safety Analysis Report (SAR) as having safety responsibilities for the gaseous diffusion plants, and USEC Headquarters Operations personnel;

(b) American Centrifuge Plant (ACP) management;

(c) American Centrifuge Lead Cascade Facility (ACLCF) management;

(d) Paducah Gaseous Diffusion Plant (Paducah) management;

(e) Portsmouth Gaseous Diffusion Plant (Portsmouth) management; and

(f) USEC's long-term contractor management who work at the ACP, ACLCF, Paducah, and Portsmouth facilities.

In addition, within 3 months of hire or promotion, new USEC managers at the entities identified in (a) through (e) above will receive initial SCWE training.

V. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review, and/or revise as appropriate, refresher SCWE training (that includes case studies) for non-management personnel.

USEC agrees to train ACP, ACLCF, Paducah and Portsmouth plants' non-management employees, and USEC long-term contractors who work within the ACP, ACLCF, Paducah, and Portsmouth facilities on the topic of SCWE within 15 months of the date of the Confirmatory Order and provide refresher training every 2 years thereafter.

VI. The terms of the Confirmatory Order apply to the successors and assigns of the Certificatee and Licensees.

On July 30, 2009, USEC Inc. consented to issuance of this Confirmatory Order with the commitments, as described in Section V below. USEC Inc. further agreed that this Confirmatory Order is to be effective upon issuance and it has waived its right to a hearing.

IV

Since USEC Inc. has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order and thereby has agreed to exercise enforcement discretion and not pursue any further enforcement action for this issue in accordance with Section VII of the Enforcement Policy.

I find that USEC Inc's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's and Certificate holder's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's and Certificate holder's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, 186 and 1710 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 70, and 10 CFR Part 76, *It is hereby ordered*, effective immediately, that Certificates of Compliance No. GDP–1 and GDP–2, and License Nos. SNS–2011 and SNM–7003 are modified as follows:

I. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to engage a third party to conduct an independent assessment of the SCWE at USEC's Paducah site. Through this assessment, the Certificatee will benchmark the effectiveness of the key elements of its SCWE initiatives; look at industry best practices; modify or further develop the SCWE program; and develop an assessment tool to periodically evaluate the effectiveness of USEC's Paducah SCWE program.

II. Within 90 calendar days after completion of the assessment as referenced in paragraph I above, USEC shall make available to the NRC onsite:

(a) A description of the tools/methods used to conduct the assessment including any survey questions;

(b) The results of the assessment and USEC's analysis of the results; and,

(c) The proposed actions, if any, USEC will take to address the results of the assessment in order to ensure that a healthy SCWE exists at USEC's Paducah site.

III. No later than 3 years after the independent assessment performed in paragraph I above, USEC shall perform a second independent assessment of the SCWE at USEC's Paducah site to determine the effectiveness of the SCWE program.

IV. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review and/or revise as appropriate, annual SCWE training (that includes case studies). USEC agrees to train the following management staff on SCWE principles within 15 months of the date of the Confirmatory Order and provide refresher training annually thereafter:

(a) USEC Headquarters personnel, to include employees designated in the Safety Analysis Report (SAR) as having safety responsibilities for the gaseous diffusion plants, and USEC Headquarters Operations personnel;

(b) American Centrifuge Plant (ACP) management;

(c) American Centrifuge Lead Cascade Facility (ACLCF) management;

(d) Paducah Gaseous Diffusion Plant (Paducah) management;

(e) Portsmouth Gaseous Diffusion Plant (Portsmouth) management; and

(f) USEC's long-term contractor management who work at the ACP, ACLCF, Paducah, and Portsmouth facilities.

In addition, within 3 months of hire or promotion, new USEC managers at the entities identified in (a) through (e) above will receive initial SCWE training.

V. By no later than 180 calendar days after the issuance of the Confirmatory Order, USEC agrees to develop, review, and/or revise as appropriate, refresher SCWE training (that includes case studies) for non-management personnel. USEC agrees to train ACP, ACLCF, Paducah and Portsmouth plants' non-management employees, and USEC long-term contractors who work within the ACP, ACLCF, Paducah, and Portsmouth facilities on the topic of SCWE within 15 months of the date of the Confirmatory Order and provide refresher training every 2 years thereafter.

VI. The terms of the Confirmatory Order apply to the successors and assigns of the Certificatee and Licensees.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee or Certificate holder of good cause.

VI

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than USEC, Inc. which holds licenses SNM–7003 and SNM–2011 and its subsidiary, USEC, which holds certificates GDP–1 and GDP–2, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at http://www.nrc.gov/site-help/e-submittals.html or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have 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.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a person (other than the Certificate holder or Licensee) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 13th day of August, 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9–20331 Filed 8–21–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34325; License No. 03–23853–01VA; EA–08–353; NRC–2009–0367]

In the Matter of National Health Physics Program, Department of Veterans Affairs, Veterans Health Administration, North Little Rock, AZ; Order Imposing Civil Monetary Penalty

I

The Department of Veterans Affairs (DVA: Licensee) is the holder of Master Materials License No. 03–23853–01VA issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on March 17, 2003. The license authorizes the DVA to issue permits to individual DVA medical centers for the possession and use of licensed material, and ties the Licensee to a framework of oversight consistent with NRC regulations, inspection, enforcement policies, procedures, and guidance.

II

An inspection of the Licensee's activities was conducted on November 18, 2008, with continued NRC in-office review through December 16, 2008, at the DVA Medical Center, Iowa City, Iowa (permittee). The results of this inspection indicated that the permittee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 10, 2009. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated May 4, 2009. In its response, the Licensee denied the violation and requested that the NRC withdraw the escalated enforcement citation, and remove the civil penalty. The Licensee provided a supplemental response on June 4, 2009, to clarify information provided in the May 4, 2009, response. In the supplemental letter, the Licensee disputed the Severity Level of the violation, based upon the new information provided.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff determined, as set forth in the non-publicly available security related Appendix to this Order, that the

violation occurred, as modified in the Appendix, and that the penalty proposed for the violation designated in the Notice should be imposed. The results of the NRC review of the information contained in the Licensee's letter and the basis for the NRC taking the actions described in this Order are set forth in the Appendix to this Order.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee shall pay, within 20 days of the date of this Order, a civil penalty in the amount of $6,500, in accordance with NUREG/BR–0254. In addition, at the time payment is made, the Licensee shall submit a statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with 10 CFR 2.202, the Licensee must submit an answer to this Order within 20 days of its publication in the **Federal Register**. The answer should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission.

In accordance with 10 CFR 2.205, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer this Order and/or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by the Licensee, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, an Order will be issued after the hearing by the Commission dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. If the Licensee fails to request a hearing within 20 days of the date of this Order, or if written approval of an extension of time in which to request a hearing has not been granted, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) whether, on the basis of such violation, this Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007; 72 FR 49139. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each 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 also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. 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 document through EIE. To be timely, electronic filings 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 document on those participants separately. Therefore, if the Licensee chooses to request a hearing, the Licensee (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have 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.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://*

ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

Dated this 14th day of August 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9–20333 Filed 8–21–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0365]

Proposed Generic Communication; NRC Regulatory Issue Summary 2005–02, Revision 1, Clarifying the Process for Making Emergency Plan Changes

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to clarify the process for making emergency plan changes. This FRN version of the draft Regulatory Issue Summary (RIS) does not include the Attachments and Enclosures as described in the body of the RIS. To view these attachments and enclosures, refer to the NRC's Agencywide Documents Access and Management System (ADAMS), document number ML080710029. The NRC's internal non-concurrence process ''Draft Management Directive 10.158, 'NRC Non-Concurrence Process','' has been invoked by a member of the NRC staff regarding draft RIS 2005–01, Revision 1. The non-concurrence and supporting information is publically available through ADAMS Accession No. ML092250622.

DATES: Comment period expires October 8, 2009. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0365 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov.* 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.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0365. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: Don A. Johnson at 301–415–4040 or by e-mail at *don.johnson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

NRC Regulatory Issue Summary 2005–02, Revision 1; Clarifying the Process for Making Emergency Plan Changes

Addressees

All holders of licenses for nuclear power reactors under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' including those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

All holders of licenses for research and test reactors under Part 50.

All holders of and applicants for nuclear power plant construction permits, early site permits and limited work authorizations under Part 50.

All holders of a combined license for a nuclear power plant under the provisions of 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

All holders of licenses for fuel facilities under the provisions of 10 CFR part 40 ''Domestic Licensing of Source Material'' required to have an emergency plan under § 40.31(j)(1)(ii).

All holders of licenses for fuel facilities under the provisions of 10 CFR part 70 ''Domestic Licensing of Special Nuclear Material'' required to have an emergency plan under § 70.22(i)(1)(ii).

All holders of certifications for gaseous diffusion plants under the provisions of 10 CFR part 76 ''Certification of Gaseous Diffusion Plants'' required to have an emergency plan under § 76.35(f).

All holders of site-specific licenses for Independent Spent Fuel Storage Installations under 10 CFR part 72 ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.''

Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) revision to inform stakeholders that reactor emergency plan changes that require prior NRC approval, in accordance with 10 CFR 50.54(q), will need to be submitted as license amendment requests in accordance with 10 CFR 50.90, ''Application for Amendment of License, Construction permit, or Early Site Permit.'' In addition, this revision will (1) clarify the meaning of ''decrease in effectiveness'', as stated in 10 CFR 50.54(q); (2) clarify the process for evaluating proposed changes to emergency plans; (3) provide a method for evaluating proposed changes to emergency plans; (4) provide clarifying guidance on the appropriate content and format of applications submitted to the NRC for approval prior to implementation; and (5) clarify what constitutes a report of emergency plan changes to be submitted to the NRC in accordance with 10 CFR 50.54(q). This revision supersedes RIS 2005–02, dated February 14, 2005, in its entirety due to the extent of changes.

(1) For non-reactor facilities, the regulations in 10 CFR 40.35(f), 70.32(i), and 76.91(o) provide direction to licensees seeking to revise their emergency plan. An emergency plan includes the plan as originally approved by the NRC and all subsequent changes made by the licensee with, and without, prior NRC review and approval under these regulations. The current practice for non-reactor facilities concerning emergency plan changes that require

prior NRC approval is to submit the changes as a license amendment request. Current regulatory guidance for non-reactor emergency plans is contained within Regulatory Guide 3.67, ''Standard Format and Content for Emergency Plans for Fuel Cycle and Materials Facilities.'' The NRC staff is working on updating Regulatory Guide 3.67 to include applicable elements of this RIS for fuel cycle facilities. The NRC will publish a **Federal Register** Notice of the issuance for public comment and availability of the draft updated Regulatory Guide.

(2) For Independent Spent Fuel Storage Installations (ISFSI), the emergency plan change process should be followed in accordance with 10 CFR 72.44(f). The information in this RIS provides useful examples of the type of evaluations NRC expects ISFSI licensees to conduct in reviewing changes to their Part 72 approved emergency plans (refer to § 72.24(k) and § 72.32) and determining if the changes may be made without prior NRC approval as required by § 72.44(f). The current practice for non-reactor facilities concerning emergency plan changes that require prior NRC approval is to submit the changes as a license amendment request. Additional guidance on emergency planning for ISFSI licensees is provided in Spent Fuel Storage and Transportation Interim Staff Guidance—16, ''Emergency Planning.''

This RIS revision requires no action or written response on the part of addressees.

Background Information

The regulation in 10 CFR 50.54(q) provides direction to licensees seeking to revise their emergency plan. The requirements related to nuclear power plant emergency plans are given in the standards in 10 CFR 50.47, ''Emergency Plans,'' and the requirements of Appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities'' to 10 CFR Part 50. The standards in § 50.54(q) and Appendix E to Part 50 also establish the requirements related to emergency plans for research and test reactors. Based upon feedback from the nuclear power industry, the research and test reactor community, and experience gained by the NRC staff after reviewing emergency plan changes, the NRC staff has identified a need to clarify the process for making changes to an emergency plan and to provide licensees with a consistent method for evaluating proposed emergency plan changes.

In addition, the NRC staff clarifies herein that the license amendment process is the correct process to use when reviewing decrease (reduction) in effectiveness submittals. Courts have found that Commission actions that expand licensees' authority under their licenses without formally amending the licenses constitute license amendments and should be processed through the Commission's license amendment procedures. See Citizens Awareness *Network, Inc.* v. *NRC,* 59 F.3d 284 (1st Cir. 1995); *Sholly* v. *NRC,* 651 F.2d 780 (D.C. Cir. 1980) (per curiam), vacated on other grounds, 459 U.S. 1194 (1983); and In re Three Mile Island Alert, 771 F.2d 720, 729 (3rd Cir. 1985), cert. denied, 475 U.S. 1082 (1986). See also Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315 (1996). A proposed emergency plan change that would reduce the effectiveness of the plan would give the licensee a capability to operate at a level of effectiveness that was not previously authorized by the NRC. In this situation, the licensee's operating authority would be expanded beyond the authority granted by the NRC as reflected in the emergency plan without the proposed change. Thus, an emergency plan change that would reduce the effectiveness of the plan would expand the licensee's operating authority under its license. A change expanding the licensee's operating authority is, according to the courts, a license amendment and must be accomplished through a license amendment process.

The staff also stated in SECY–08–0024, ''Delegation of Commission Authority to Staff to Approve or Deny Emergency Plan Changes that Represent a Decrease in Effectiveness,'' dated February 25, 2008, ''To make the process by which the NRC will address proposed 10 CFR 50.54(q) changes that represent a decrease in effectiveness clearer, the staff intends to incorporate language similar to that which currently exists in 10 CFR 50.54(p)(1), as part of the planned rulemaking.'' The current schedule for the staff's emergency preparedness (EP) rulemaking calls for the final rule to be issued no earlier than the summer of 2010. Because of the timeframe associated with the rulemaking, the staff has determined that the prudent action is to issue a RIS to clarify that licensees must submit proposed emergency plan changes which represent a decrease in effectiveness for NRC approval as specified in § 50.54(q), and the license amendment process is the correct process for the staff to use in reviewing the proposed change. For purposes of discussion and to incorporate the possibility of future regulatory changes, the term ''decrease in effectiveness'' is considered synonymous with ''reduction in effectiveness (RIE).''

Summary of Issue

Licensees routinely evaluate proposed revisions to their emergency plan, to determine if these changes reduce the effectiveness of their current approved emergency plan or adversely affect their ability to implement the emergency plan. Clarification is needed of an acceptable method for licensees to use in consistently evaluating proposed changes to the emergency plan to ensure the licensee's ability to maintain and implement the approved emergency plan. Additionally, licensees should understand the process for submitting proposed emergency plan changes to the NRC for approval prior to implementation when there is a determination of a decrease (reduction) in effectiveness.

The change process is described below and clarified by providing a screening criterion that would ensure consistency of emergency plan change determinations of a decrease (reduction) in effectiveness. Enclosure 1, ''10 CFR 50.54(q) Evaluation Procedure,'' presents a suggested outline for applying the screening criteria for the evaluation of a proposed emergency plan change, which is graphically depicted in Attachment 1 to Enclosure 1, ''10 CFR 50.54(q) Flowchart.'' In addition, Enclosure 2, ''Guidance for Content of Emergency Plan Submittals to NRC Requiring Prior NRC Approval,'' provides guidance to licensees in the development of their application for NRC prior approval of proposed emergency plan changes. The information in this RIS revision clarifies the process for changing emergency plans to ensure that licensees maintain effective emergency plans thereby maintaining reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. This RIS revision also provides a consistent methodology for licensees to evaluate changes to their emergency plans and provides clarifying guidance for the development of applications for NRC prior approval. This will help ensure that NRC review activities and decisions are effective, efficient, predictable, and consistent.

The regulations require licensees to submit a report of each change within a specified period of time after the change is made. The NRC Inspectors use this report to evaluate the effectiveness of a licensee's emergency plan change management program in accordance with NRC Inspection Procedures, and

although not required, the inclusion of the applicable licensee evaluation and justification for the change as part of this report would be beneficial to the staff.

Regulation

In part, 10 CFR 50.54(q) states the following:

The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of appendix E to this part. The research reactor and/or the fuel facility licensee may make changes to these plans without Commission approval only if these changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of appendix E to this part* * *. Proposed changes that decrease the effectiveness of the approved emergency plans may not be implemented without application to and approval by the Commission.

Definitions

(1) Decrease (Reduction) in Effectiveness (RIE)

(a) A change in an emergency plan that results in reducing the licensee's capability to perform an emergency planning function in the event of a radiological emergency.

(i) Note that other licensee activities could affect the ability to implement the emergency plan effectively. Licensees must maintain the effectiveness of their NRC approved emergency plans, up to and including ensuring that changes made to other programs, structures, systems or components do not adversely impact the licensee's ability to effectively implement its emergency plan. See Information Notice 2005–19, ''Effect of Plant Configuration Changes on the Emergency Plan,'' dated July 18, 2005, for additional information.

(1) An RIE will occur if there is a change or reduction in an emergency planning function without a commensurate reduction or change in the bases for that emergency planning function or without measures put in place to reduce the impact of the proposed change to the emergency plan. The overall impact of proposed changes on the effectiveness of the emergency plan or its implementation is to be determined, not just the effect that individual changes have on a specific part of the emergency plan.

(2) The following provides some examples of RIEs that would require prior NRC approval without a commensurate reduction or change in the bases for that emergency planning function or without measures put in place to reduce the impact of the proposed change to the emergency plan. These examples should not be viewed as being all-inclusive or exclusive; rather, licensees should use them to inform decisions involving various changes being considered. It is also possible that site-specific situations may make a particular example inapplicable to a site. Even if a particular example completely encompasses the change being considered, the licensee's emergency plan change evaluation should explain why the site-specific implementation of the change would not be an RIE for that particular site. It is not sufficient for such an analysis to simply cross-reference an example in this RIS revision.

(a) A change that would cause any of the major functional areas or major tasks identified in the emergency plans to be unassigned. An example of this would be a technical specification change eliminating on-shift radiation technician coverage without making an alternative arrangement for providing the requisite technical expertise in a timely manner.

(b) A change that would impede site access for offsite assistance relied on in the plan without viable alternate arrangements being made. An example would be the closure or planned closure of a major river bridge in a case where the route via the nearest available crossing would incur a substantial increase in response time.

(c) A change to the emergency response organization (ERO) callout procedures or hardware that would delay ERO notification such that the augmentation times in the emergency plans can no longer be achieved. A change to communications hardware that would reduce the capability to initiate and complete required emergency notifications within 15 minutes of the emergency declaration.

(d) A change to the onsite meteorological measurements program such that meteorological data currently readily available in emergency response facilities in accordance with the emergency plan would no longer be readily available.

(e) A change to hazard assessment and radiation protection assignments in re-entry and recovery procedures that would not provide an adequate level of personal protection in uncertain reentry conditions.

(f) A change that reduces the availability of site familiarization training currently presented to offsite assistance groups (*e.g.,* firefighters, local law enforcement, and medical services, including mutual aid companies that would support these groups).

(g) A change that delegates the responsibility for performance of various aspects of emergency plan maintenance to contractors or other external groups without adequate supervisory oversight to ensure that program elements continue to be met (*e.g.,* a change delegating testing and maintenance of the Alert and Notification System to an external group not subject to typical nuclear facility work process and configuration controls).

(3) For proposed changes to individual emergency action levels (EALs) (*i.e.,* not an entire EAL scheme change), an RIE will occur in the following cases:

(a) The proposed change to the EAL would potentially cause an underclassification (*e.g.,* what was considered an Alert in the approved emergency plan would now be considered an Unusual Event or not classified at all).

(b) The proposed change to the EAL would potentially cause an overclassification (*e.g.,* what was considered a Site Area Emergency in the approved emergency plan would now be considered a General Emergency with potential consequences for public health and safety).

(c) If the proposed change to the EAL is to change an Initiating Condition setpoint (or threshold) without a commensurate change in the regulatory basis for the EAL Initiating Condition setpoint (or threshold).

(d) The actual numerical setpoint of a given EAL may be revised without prior NRC approval under the following conditions via the 10 CFR 50.54(q) emergency plan change process:

(i) The regulatory basis for the EAL setpoint has been revised and is approved via a letter to the licensee or a Safety Evaluation (SE). For example, a site receives NRC approval (via a SE) for power up-rate. Power up-rate implementation causes the ''normal'' radiation levels to increase, thus necessitating an increase in EAL setpoints based on ''normal'' radiation levels. The regulatory basis for the setpoint has been changed, thus this change can be processed via the emergency plan change process because the effectiveness of the emergency plan has not been reduced.

(ii) The regulatory basis for the EAL setpoint has not been changed but the method for detection of the setpoint has been changed. For example, a given EAL setpoint is based upon exceeding 1 Rem total effective dose equivalent (TEDE). The radiation monitor reading setpoint is based upon a reading that would give the equivalent of exceeding 1 Rem

TEDE. The radiation monitor is replaced and operates differently. The actual numerical value of the EAL needs to be revised to that which is equivalent to 1 Rem TEDE. The regulatory basis for the setpoint has not been changed, thus this change can be processed via the emergency plan change process as the effectiveness of the emergency plan has not been reduced.

(2) Emergency plan

(a) The document(s) prepared and maintained by the licensee that identify and describe the licensee's methods for maintaining and performing emergency planning functions. An emergency plan includes the plans as originally approved by the NRC and all subsequent changes made by the licensee with, and without, prior NRC review and approval under 10 CFR 50.54(q).

(i) The licensee's emergency plan consists of:

(1) The emergency plan as approved by the NRC via a Safety Evaluation Report, SE, or license amendment (LA) from the Office of Nuclear Reactor Regulation (NRR) or the Office of Federal and State Materials and Environmental Management Programs (FSME).

(2) Changes to the emergency plan explicitly reviewed by the NRC through an SE, or LA from NRR or FSME, and found to meet the applicable regulations.

(3) Changes to the emergency plan explicitly reviewed by the NRC through an SE, or LA, and found to be an approved amendment to the licensee's emergency plan.

(4) Changes made by the licensee without NRC review and approval after the licensee concluded that the change(s) do not constitute a RIE.

Emergency Plan Change Process

1. Process Overview

Reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency is based on the licensee's emergency plan, and the successful implementation of that emergency plan. The body of an emergency plan contains statements that describe how a licensee will meet regulatory requirements. The standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR part 50 establish the contents of the nuclear power reactor emergency plan. The standards in § 50.54(q) and Appendix E to Part 50 establish the requirements related to emergency plans for research and test reactors. Subsequent changes to the emergency plan must comply with § 50.54(q). Enclosure 1 outlines the emergency plan change process, and Attachment 1 to Enclosure 1 graphically depicts the process in a flowchart.

2. Emergency Plan Review

Changes to an emergency plan may result from advances in technology, new or revised rules, site-specific needs, processes, guidance (such as Nuclear Energy Institute guidance endorsed by the NRC), technical specification changes, or modifications to instrumentation. Changes that the licensee has identified as RIEs must be submitted to the NRC for review and prior approval. The NRC staff will review the emergency plan change against the standards, regulations, guidance documents and the approved emergency plan. The NRC will review and approve submittals on a case-by-case basis. An emergency plan change approved for one licensee does not mean that the same or similar change would be approved for another licensee.

For the purposes of determining whether a change to a licensee's emergency plan constitutes an RIE, the licensee should use the last emergency plan reviewed and approved by the NRC. If the emergency plan change process has been properly implemented over the years, comparing a proposed emergency plan change to either the latest emergency plan reviewed and approved by the NRC or the emergency plan as changed by the licensee should result in the same RIE determination. For example, if a licensee made a series of changes over time to the same specific provision of the emergency plan, where each change was separately determined not to constitute an RIE, then there should be no RIE. Therefore, there should be no RIE when comparing the latest emergency plan to the emergency plan reviewed and approved by the NRC. If a licensee or the NRC concludes that there is a RIE due to a series of changes over time, then the provisions of the emergency plan change process have not been correctly followed.

The EP requirements are a framework for how the licensee will meet the applicable standards and requirements of the regulations. If a licensee has determined that an EP requirement should be increased in order to meet the planning standards or Appendix E to Part 50 requirements, these changes must follow the emergency plan change process and revise the emergency plan to reflect this increase to the EP requirement. Nevertheless, whether or not an emergency plan change results in a RIE is not determined by assessing whether NRC regulatory requirements continue to be met after the EP requirement has been changed. The licensee's emergency plan may include EP requirements that exceed the baseline standards and requirements as set forth in § 50.47(b) and Appendix E to Part 50. For the RIE determination, the change or changes should be evaluated against the capability to perform the functions and the associated time requirement of performing the function, if applicable. The evaluation should document whether the capability or timeliness to perform a function is lost and/or degraded. In addition to the RIE determination, the change or changes should also be evaluated to verify that they continue to meet the standards and requirements as set forth in § 50.47(b) and Appendix E to Part 50.

The current Commission requirements for document retention in § 50.54(q), specify that changes that do not warrant NRC approval must be retained for 3 years. The licensee must retain changes that reduce the effectiveness of the emergency plan until the Commission terminates the license. It may be prudent to save emergency plan change documentation to show the historical progression of changes, since the Commission, through its staff, may review at any time, the emergency plan changes that have been made.

Related Topics Regarding Emergency Plan Changes

1. Regulatory Process for Evaluating Licensee Requests for NRC Prior Approval of Emergency Plan Changes Determined To Be a RIE in Accordance With 10 CFR 50.54(q)

Similar to security plan changes submitted via 10 CFR 50.54(p)(1), emergency plan changes that result in the reduction in the effectiveness of the approved emergency plan require prior NRC approval, under § 50.54(q), and should to be submitted as license amendment requests under § 50.90.

2. Emergency Action Level Changes

A revision to an entire EAL scheme, from NUREG–0654, ''Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,'' to another NRC-endorsed EAL scheme, must be submitted for prior NRC approval as specified in Section IV.B. of Appendix E to 10 CFR Part 50. The Statement of Considerations for the final rule amending the NRC's regulations relating to NRC approval of EAL changes, dated January 26, 2005, stated in part, ''The

Commission believes a licensee's proposal to convert from one EAL scheme (e.g., NUREG–0654-based) to another EAL Scheme (NUMARC/NESP–007 or NEI 99–01 based) * * * is of sufficient significance to require prior NRC review and approval. NRC review and approval for such major changes in EAL methodology is necessary to ensure that there is reasonable assurance that the final EAL change will provide an acceptable level of safety.'' Regulatory Guide 1.101, Revisions 3 and 4, ''Emergency Planning and Preparedness for Nuclear Power Reactor,'' endorsed NUMARC/NESP–007 and NEI 99–01 EAL guidance, respectively, as acceptable alternatives to the guidance provided in NUREG–0654 for development of EALs to comply with § 50.47 and Appendix E to Part 50. A change in an EAL scheme to incorporate the improvements provided in NUMARC/NESP–007 or NEI 99–01 would not decrease the overall effectiveness of the emergency plan and would not expand a licensee's operating authority beyond that previously authorized by NRC, but due to the potential safety significance of the change, the change needs prior NRC review and approval. This approval is given via SE and letter.

Revisions of an individual EAL that results in a decrease in effectiveness must be submitted for NRC approval as specified in § 50.54(q), and the license amendment process is the correct process for the staff to use in reviewing the proposed change. As discussed previously, an emergency plan change that would reduce the effectiveness of the plan would expand the licensee's operating authority under its license. A change expanding the licensee's authority is, according to the courts, a license amendment and must be accomplished through a license amendment process. For research and test reactors, NUREG–0849, ''Standard Review Plan for the Review and Evaluation of Emergency Plans for Research and Test Reactors,'' issued October 1983, provides guidance on EALs and how changes should be made on a case-by-case basis with consideration of the provisions of § 50.54(q).

3. Inspection Activities

For power reactors, the NRC inspectors use Inspection Procedure (IP) 71114.04 to conduct a review of the effectiveness of the licensee's implementation of the 10 CFR 50.54(q) change process. For research and test reactors, the NRC inspectors use IP 69011, ''Class I Research and Test Reactor Emergency Preparedness,'' and IP 69001, ''Class II Research and Test Reactors.'' The inspector will perform a screening review of the change relative to the emergency plan; however, this will not constitute NRC approval of the plan as changed.

The documentation of the change reviewed by the inspectors will be the report provided by the licensee as stated in § 50.54(q). Although not required, the inclusion of the applicable licensee evaluation and justification for the change as part of this report would assist the staff in the review.

4. Lower Tier Documents

If a licensee has incorporated a lower tier document into the emergency plan or the emergency plan explicitly references a lower tier document as a method to implement a specific requirement in the emergency plan, then, it is considered part of the plan and subject to § 50.54(q) review. Historically, some licensees have developed emergency plan implementing procedures that included the necessary information needed for activities that are required to meet the regulations, for example, procedures for notifications, dose assessment, protective action recommendations, emergency classifications and emergency action levels. The staff is not making the use of § 50.54(q) to review all changes to lower tier documents a requirement, but acknowledges that using § 50.54(q) as the regulation to provide revision control of these lower tier documents has been in place and supported by the NRC through the inspection and licensing process.

Backfit Discussion

This RIS revision does not require any action or written response. This RIS revision provides non-regulatory review guidance for licensees and clarifies existing regulatory requirements licensees must follow when proposing changes to their emergency plans. The NRC's Backfit Rule, 10 CFR 50.109, applies to, among other things, the procedures necessary to operate a nuclear power plant. To the extent that using a license amendment process for making modifications to emergency plans that reduce the effectiveness of the plans is considered a change, it would be a change to the NRC's regulatory process for addressing modifications to the emergency plan. The NRC's regulatory review process is not a licensee procedure required for operating a plant that would be subject to backfit limitations.

Further, the Backfit Rule protects licensees from Commission actions that arbitrarily change license terms and conditions. In 10 CFR 50.54(q), a licensee requests Commission authority to do what is not currently permitted under its license. The licensee has no valid expectations protected by the Backfit Rule regarding the means for obtaining the new authority that is not permitted under the current license. For these reasons, this RIS revision does not constitute a backfit under 10 CFR 50.109, and the staff did not perform a backfit analysis.

Federal Register Notification

To be done after the public comments periods.

Paperwork Reduction Act Statement

This RIS revision does not contain information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

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

Contact

Please direct any questions about this matter to Don A. Johnson at (301) 415–4040, or by e-mail: *don.johnson@nrc.gov.*

End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of August 2009.

For the Nuclear Regulatory Commission.

Martin C. Murphy,

Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E9–20334 Filed 8–21–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 39 existing Small Business Development Centers (SBDCs) for refunding on January 1, 2010 subject to the availability of funds. Twenty states do not participate in the EO 12372 process therefore, their addresses are not included. A short description of the SBDC program follows in the **SUPPLEMENTARY INFORMATION** below.

The SBA is publishing this notice at least 90 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Greg Panichello, State Director, Salt Lake Community College, 9750 South 300 West, Sandy, UT 84070, (801) 957–3481.

Mr. Herbert Thweatt, Director, American Samoa Community College, P.O. Box 2609, Pago Pago, American Samoa 96799, 011–684–699–4830.

Mr. John Lenti, State Director, University of South Carolina, 1710 College Street, Columbia, SC 29208, (803) 777–4907.

Ms. Kelly Manning, State Director, Office of Business Development, 1625 Broadway, Suite 1710, Denver, CO 80202, (303) 892–3864.

Mr. Jerry Cartwright, State Director, University of West Florida, 401 East Chase Street, Suite 100, Pensacola, FL 32502, (850) 473–7800.

Ms. Diane R. Howerton, Regional Director, University of California, Merced, 550 East Shaw, Suite 105A, Fresno, CA 93710, (559) 241–7406.

Mr. Bill Carter, State Director, University of Hawaii/Hilo, 308 Kamehameha Avenue, Suite 201, Hilo, HI 96720, (808) 974–7515.

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Administration, Room 411, Reno, NV 89557–0100, (775) 784–1717.

Mr. Jeffrey Heinzmann, State Director, Economic Development Council, One North Capitol, Suite 900, Indianapolis, IN 46204, (317) 234–2086.

Ms. Debbie Trujillo, Regional Director, Southwestern Community College District, 900 Otey Lakes Road, Chula Vista, CA 91910, (619) 482–6388.

Mr. Mark DeLisle, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420.

Mr. Brett Rogers, State Director, Washington State University, 534 East Trent Avenue, Spokane, WA 99210–1495, (509) 358–7765.

Mr. Casey Jeszenka, SBDC Director, University of Guam, P.O. Box 5014—U.O.G. Station, Mangilao, GU 96923, (671) 735–2590.

Ms. Sheneui Weber, Regional Director, Long Beach Community College, 4040 Paramount Blvd., Suite 107, Lakewood, CA 90712, (562) 938–5004.

Mr. John Hemmingstad, State Director, University of South Dakota, 414 East Clark Street, Patterson Hall, Vermillion, SD 57069, (605) 677–6256.

Ms. Gayle Kugler, State Director, University of Wisconsin, 432 North Lake Street, Room 423, Madison, WI 53706, (608) 263–8860.

Mr. Dan Ripke, Regional Director, California State University, Chico, Building 35, CSU Chico, Chico, CA 95929, (530) 898–4598.

Ms. Kristin Johnson, Regional Director, Humboldt State University, Office of Economic & Community Dev., 1 Harpst Street, 2006A, Siemens Hall, Arcata, CA 95521, (707) 826–3920.

Mr. Jesse Torres, Regional Director, California State University, Fullerton, 800 North State College Blvd., Fullerton, CA 92834, (714) 278–2719.

FOR FURTHER INFORMATION CONTACT: Antonio Doss, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with the SBA. SBDCs operate on the basis of a state plan to provide assistance within a state or geographic area. The initial plan must have the written approval of the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) increase economic growth;

(c) assist more small businesses; and

(d) broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) open all service centers at least 40 hours per week, or during the normal business hours of its State or academic Host Organization, throughout the year;

(c) develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) maintain lists of private consultants at each service center.

Dated: August 13, 2009.

Antonio Doss,

Associate Administrator for Small Business Development Centers.

[FR Doc. E9–20261 Filed 8–21–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11840 and #11841]

Iowa Disaster #IA–00018

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–1854–DR), dated 08/13/2009.

Incident: Severe storm.

Incident Period: 07/10/2009.

Effective Date: 08/13/2009.

Physical Loan Application Deadline Date: 10/12/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 05/13/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/13/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Black Hawk.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11840B and for economic injury is 11841B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–20259 Filed 8–21–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11842 and #11843]

Pennsylvania Disaster #PA–00026

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Pennsylvania.

Dated: 08/18/2009.

Incident: Storms and flooding.

Incident Period: 08/02/2009.

Effective Date: 08/18/2009.

Physical Loan Application Deadline Date: 10/19/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 05/18/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Montgomery.

Contiguous Counties: Pennsylvania: Berks, Bucks, Chester, Delaware, Lehigh, Philadelphia.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11842 6 and for economic injury is 11843 0.

The States which received an EIDL Declaration # are Pennsylvania, Maryland.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 18. 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–20323 Filed 8–21–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11835 and #11836]

Maine Disaster #ME–00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of MAINE (FEMA—1852—DR), dated 07/30/2009.

Incident: Severe storms, flooding, and landslides.

Incident Period: 06/18/2009 through 07/08/2009.

Effective Date: 08/18/2009.

Physical Loan Application Deadline Date: 09/28/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/30/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MAINE, dated 07/30/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Piscataquis.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–20330 Filed 8–21–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11844 and #11845]

Kentucky Disaster #KY–00027

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Kentucky (FEMA—1855—DR), dated 08/14/2009.

Incident: Severe storms, straight-line winds, and flooding.

Incident Period: 08/04/2009.

Effective Date: 08/14/2009.

Physical Loan Application Deadline Date: 10/13/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 05/14/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/14/2009, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Jefferson.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Bullitt, Hardin, Oldham, Shelby, Spencer.

Indiana: Clark, Floyd, Harrison.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11844B and for economic injury is 118450.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–20260 Filed 8–21–09; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Aeronautics Science and Technology Subcommittee Committee on Technology; National Science and Technology Council

ACTION: Notice of listening session and invitation to submit white papers. Public consultation is requested regarding the biennial update to the National Plan for Aeronautics Research and Development and Related Infrastructure.

SUMMARY: Executive Order (E.O.) 13419—National Aeronautics Research and Development—signed December 20, 2006, and the National Aeronautics Research and Development Policy that was developed by the National Science and Technology Council (NSTC) call for executive departments and agencies conducting aeronautics research and development (R&D) to engage industry, academia and other non-Federal stakeholders in support of government planning and performance of aeronautics R&D. E.O. 13419 further requires a biennial update to the National Plan for Aeronautics Research and Development and Related Infrastructure (Plan).

Announcement of Listening Session: This **Federal Register** notice announces the Aeronautics Science and Technology Subcommittee (ASTS) of the NSTC's Committee on Technology decision to hold a listening session to receive feedback on the biennial update to the Plan. At this listening session, ASTS members will listen to public feedback on the mobility goals and objectives in the biennial update to the Plan.

DATES AND ADDRESSES: The listening session will be held in conjunction with 9th AIAA Aviation Technology, Integration, and Operations Conference (ATIO) and Aircraft Noise and Emissions Reduction Symposium (ANERS) at the Marriott Hilton Head Beach and Golf Resort, Oceanfront at Palmetto Dunes, One Hotel Circle, Hilton Head Island, SC 29928. The listening session will be held on Wednesday, September 23, 2009, from 3:30 p.m. to 5:30 p.m. in the Sabal Palm Ballroom. Information regarding the 9th AIAA Aviation Technology, Integration, and Operations Conference (ATIO) and Aircraft Noise and Emissions Reduction Symposium (ANERS) is available at the AIAA Web site: *http://www.aiaa.org*.

Note: Persons solely attending the ASTS listening session do *not* need to register for the AIAA Conference and Symposium to attend this session. There will be no admission charge for persons solely attending the listening session. Seating is limited and will be on a first come, first served basis.

Submission of White Papers: White papers are also invited and encouraged from those individuals who may want to provide information for consideration during the biennial update to the Plan. Of particular interest is aeronautics R&D information that may be used during consideration of the biennial update to enhance the national aeronautics R&D challenges, goals and objectives related to: mobility; national security and homeland defense; aviation safety; and energy and the environment currently contained in the Plan. The submission of white papers is invited through September 10, 2009 and details regarding the submission of white papers are available at: *http://www.ostp.gov/nstc/aeroplans*.

FOR FURTHER INFORMATION CONTACT: Additional information and links to E.O. 13419, the National Aeronautics Research and Development Policy, the National Plan for Aeronautics Research and Development and Related Infrastructure, and the Technical Appendix—National Plan for Aeronautics Research and Development and Related Infrastructure are available by visiting the Office of Science and Technology Policy's NSTC Web site at: *http://www.ostp.gov/nstc/aeroplans* or by calling 202–456–6601.

M. David Hodge,

Operations Manager, OSTP.

[FR Doc. E9–20353 Filed 8–21–09; 8:45 am]

BILLING CODE 3170–W9–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17Ad–15, OMB Control No. 3235–0409, SEC File No. 270–360.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17a–10 (17 CFR 240.17Ad–15) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–15 requires approximately 587 transfer agents to establish written standards for accepting and rejecting guarantees of securities transfers from eligible guarantor institutions. Transfer agents are also required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 587 registered transfer agents. The staff estimates that every transfer agent will spend about 40 hours annually to comply with Rule 17Ad–15. The total annual burden for all transfer agents is 23,480 hours (587 times 40). The average cost per hour is approximately $50. Therefore, the total cost of compliance for all transfer agents is $1,174,000 (23,480 times $50).

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *shagufta_ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: August 17, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20188 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17f–1(c) and Form X–17F–1A; SEC File No. 270–29; OMB Control No. 3235–0037.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for in the following rule: Rule 17f–1(c) and Form X–17F–IA (17 CFR 249.100) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f–1(c) (17 CFR 240.17f–1(c)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) requires approximately 26,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities certificates to the Commission or its designee, to a registered transfer agent for the issue, and, when criminal activity is suspected, to the Federal Bureau of Investigation. Such entities are required to use Form X–17F–1A to make such reports. Filing these reports fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Since these reports are compiled in a central database, the rule facilitates reporting institutions to access the database that stores information for the Lost and Stolen Securities Program.

We estimate that 26,000 reporting institutions will report that securities certificates are either missing, lost, counterfeit, or stolen annually and that each reporting institution will submit this report 50 times each year. The staff estimates that the average amount of time necessary to comply with Rule 17f–1(c) and Form X17F–1A is five minutes per submission. The total burden is 108,333 hours annually for the entire industry (26,000 times 50 times 5 divided by 60).

Rule 17f–1(c) is a reporting rule and does not specify a retention period. The rule requires an incident-based reporting requirement by the reporting institutions when securities certificates are discovered to be missing, lost, counterfeit, or stolen. Registering under Rule 17f–1(c) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under Rule 17f-1(c) will not be kept confidential; however, the Lost and Stolen Securities Program database will be kept confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *shagufta_ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: August 17, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20189 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form F–80, OMB Control No.

3235–0404, SEC File No. 270–357.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form F–80 (17 CFR 239.41) is used by large, publicly-traded Canadian foreign private issuers registering securities that are offered in business combinations and exchange offers. The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of the information. The information provided is mandatory and all information is made available to the public upon request. Form F–80 takes approximately 2 hours per response and is filed by approximately 4 issuers for a total annual burden of 8 hours. The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 17, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20187 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rules 17h–1T and 17h–2T; SEC File No. 270–359; OMB Control No. 3235–0410.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17h–1T (17 CFR 240.17h–1T) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'') requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T (17 CFR 240.17h–2T) under the Act requires a broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T is necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities is reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 148 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 148 respondents require approximately 10 hours per year, or 2.5 hours per quarter, to maintain the records required under Rule 17h–1T, for an aggregate annual burden of 1,480 hours (148 respondents × 10 hours). In addition, each of these 148 respondents must make five annual responses under Rule 17h–2T. These five responses require approximately 14 hours per respondent per year, or 3.5 hours per quarter, for an aggregate annual burden of 2,072 hours (148 respondents × 14 hours). In addition, there are approximately five new respondents per year [1] that must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the Rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the Rules requires three hours, thus requiring an aggregate of 20 hours (5 new respondents × 4 hours). Thus, the total compliance burden per year is approximately 3,572 burden hours (1,480 + 2,072 + 20).

Rule 17h–1T specifies that the records required to be maintained under the Rule must be preserved for a period of not less than three years. There is no specific retention period or record keeping requirement for Rule 17h–2T. The collection of information is mandatory and the information required to be provided to the Commission pursuant to these Rules are deemed confidential, notwithstanding any other provision of law under Section 17(h)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(h)(5)) and Section 552(b)(3)(B) of the Freedom of Information Act (5 U.S.C. 552(b)(3)(B)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 17, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20186 Filed 8–21–09; 8:45 am]

BILLING CODE P

[1] However, the staff further estimates that the number of respondents decreases by at least that many firms per year as a result of mergers and other business factors.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60507; File No. 4–546]

Joint Industry Plan; Notice of Summary Effectiveness on a Temporary Basis of Joint Amendment No. 1 to the Options Order Protection and Locked/Crossed Market Plan, and Notice of Filing of Such Amendment

August 14, 2009.

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 608 of Regulation NMS thereunder (''Rule 608''),[2] notice is hereby given that on August 7, 2009, August 7, 2009, August 7, 2009, August 7, 2009, August 11, 2009, August 11, 2009, and August 11, 2009, NYSE Arca, Inc. (''NYSE Arca''), NYSE Amex, LLC (''NYSE Amex''), International Securities Exchange, LLC (''ISE''), NASDAQ OMX BX, Inc. (''BOX''), Chicago Board Options Exchange, Incorporated (''CBOE''), NASDAQ OMX PHLX, Inc. (''Phlx''), and The NASDAQ Stock Market LLC (''Nasdaq'') (collectively, ''Participants''),[3] respectively, filed with the Securities and Exchange Commission (''Commission'') an amendment to the Options Order Protection and Locked/Crossed Market Plan (''Plan'') [4] (''Joint Amendment No. 1''). In Joint Amendment No. 1, the Participants propose to modify Section 5(b) of the Plan to eliminate the requirement that policies and procedures be submitted to the Commission for approval. This order summarily puts into effect Joint Amendment No. 1 on a temporary basis not to exceed 120 days and solicits comment on Joint Amendment No. 1 from interested persons.[5]

II. Description of the Proposed Amendment

The purpose of Joint Amendment No. 1 is to clarify that, while each Participant is required under the Plan to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs, there would not be a requirement that these policies and procedures be submitted to the Commission for approval. The Plan requires, and each Participant has represented, that its policies and procedures will be reasonably designed to prevent Trade-Throughs in the Exchange's market in Eligible Options Classes, unless they fall within an exception set forth in Section 5(b) of the Plan. If relying on such exception, the policies and procedures will be reasonably designed to assure compliance with the terms of the exception.

The Participants request that the Commission provide summary effectiveness pursuant to Rule 608(b)(4) of the Act for the purpose of effecting Joint Amendment No. 1 on a temporary basis for 120 days.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder.[6] Specifically, the Commission finds that the proposed amendment to the Plan is consistent with Section 11A of the Act [7] and Rule 608 of Regulation NMS thereunder [8] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission notes that, as a general matter, it does not approve specific policies and procedures that exchanges use to ensure compliance with their rules or NMS Plan provisions. Rather, the Commission uses its authority to review and examine exchanges to ensure that exchanges are meeting their regulatory obligations.

In addition, the Commission finds that it is appropriate to summarily put into effect Joint Amendment No. 1 upon publication of this notice on a temporary basis for 120 days. The Commission believes that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets because it would allow the amendment to become effective prior to the anticipated implementation date of the Plan.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Joint Amendment No. 1 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 4–546 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 4–546. 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 Joint Amendment that are filed with the Commission, and all written communications relating to the proposed Joint Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Com mission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the proposed Joint Amendment also will be available for inspection and copying at the respective

[1] U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] See letter from Peter G. Armstrong, NYSE Arca, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Michael Babel, NYSE Amex, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Michael J. Simon, ISE, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Maura A. Looney, Associate Vice President, BX, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Edward J. Joyce, CBOE, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009; letter from Richard S. Rudolph, Assistant General Counsel, Phlx, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009; and letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009. On August 12, 2009, Nasdaq and Phlx submitted letters correcting technical errors in their letters to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009.

[4] On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

[5] A proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. See 17 CFR 242.608(b)(4).

[6] In summarily putting into effect this Joint Amendment No. 1, the Commission has considered its impact on efficiency, competition, and capital formation.

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

principal office of CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–546 and should be submitted on or before September 14, 2009.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [9] and Rule 608 of Regulation NMS,[10] that the proposed Joint Amendment No. 1 is summarily put into effect until December 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20191 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60522; File No. SR–NYSEArca–2009–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Options Rule 6.76A

August 18, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 13, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate Rule 6.76A(c) reflecting unimplemented routing functionality. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to eliminate references to exposure before routing functionality from NYSE Arca Options Rule 6.76A(c).[4] The Exchange has not implemented this functionality and has no plans to implement it. The Exchange does not believe that this functionality is appropriate for the marketplace. As such, the Exchange proposes to delete references to this functionality from its rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See* Securities Exchange Act Release No. 34–59846 (April 29, 2009), 74 FR 21033 (May 6, 2009) (notice of filing and immediate effectiveness of SR–NYSEArca–2009–34).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–76 on the subject line.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to be met.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C.552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–76 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20240 Filed 8–21–09; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60493; File No. SR–BSECC–2009–04]

Self-Regulatory Organizations; the Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

August 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 22, 2009, Boston Stock Exchange Clearing Corporation (''BSECC'') filed with the Securities and Exchange Commission (''Commission or SEC'') the proposed rule change described in Items I and II below, which items have been prepared primarily by BSECC. BSECC filed the proposed rule change under Rule 19b–4(f)(6) under the Act [2] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSECC is filing this proposed rule change with regard to proposed changes to the bylaws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The proposed rule change will be implemented as soon as practicable following submission of this filing. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at BSECC's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSECC 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. BSECC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(f)(6).

[3] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX made certain amendments to its by-laws to update its by-laws and to make improvements in its governance. In SR–NASDAQ–2009–039, The NASDAQ Stock Market LLC (''NASDAQ Exchange'') sought and received Commission approval to adopt these by-law changes as part of the rules of the NASDAQ Exchange.[4] BSECC is submitting this filing to adopt the same by-law changes as rules of BSECC.

The proposed changes to the by-laws are as follows:

• Article I is being amended to reflect the recent name changes of the Philadelphia Stock Exchange and the Boston Stock Exchange to NASDAQ OMX PHLX, Inc. and NASDAQ OMX BX, Inc., respectively.

• Article III is being amended to modify the procedures governing proposals by stockholders, including proposals by stockholders to nominate directors. Specifically, the amendment will require a stockholder making a proposal to supply more complete information about the stockholder's background, including a description of any agreement, arrangement, or understanding between the stockholder, the beneficial owner of the stock, and any other persons acting in concert with them; a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares), the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of NASDAQ OMX; and any other information regarding the stockholder and beneficial owner that would be required to be disclosed in a proxy statement under Section 14(a) of the Act. These changes are designed to provide the NASDAQ OMX Board of Directors and its stockholders with greater insight into the identity and intentions of persons presenting stockholder proposals to allow more thorough consideration of the merits of such proposals. These requirements are

[4] Securities Exchange Act Release No. 59858 (May 4, 2009), 74 FR 22191 (May 12, 2009) (SR–NASDAQ–2009–039); Securities Exchange Act Release No. 60183 (June 26, 2009), 74 FR 32207 (July 7, 2009) (SR–NASDAQ–2009–039).

deemed satisfied, however, in the case of a proposal that is validly submitted under the rules and regulations promulgated under the Act (*i.e.* , SEC Rule 14a–8) and included in NASDAQ OMX's proxy. However, compliance with the By-Laws or with SEC Rule 14a–8 provides the exclusive means for stockholders to make proposals. The amendments also provide that a representative of a stockholder qualified to appear at an annual meeting must be an officer, manager, or partner of the stockholder or must have written authorization from the stockholder. The amendments also make several minor clarifying changes to the text of Article III.

• Article IV is being amended to state explicitly that the Management Compensation Committee and the Audit Committee must be composed exclusively of independent directors within the meaning of the rules of the NASDAQ Stock Market that govern NASDAQ OMX's listing (and in the case of the Audit Committee, Section 10A of the Act).[5] Although NASDAQ OMX adheres scrupulously to the independence requirements imposed by the NASDAQ Stock Market and the Act, it believes that these requirements should be explicitly stated in the By-Laws as well. NASDAQ OMX is also removing language making its Chief Executive Officer an ex-officio, non-voting member of the Management Compensation Committee. In this regard, listing standards of the NASDAQ Stock Market require management compensation determinations regarding executive officers to be made by vote of the Board's independent directors or by vote of or upon the recommendation of a committee composed solely of independent directors.[6] NASDAQ OMX has satisfied this requirement by submitting compensation decisions to the vote of all of NASDAQ OMX's independent directors, but removing the Chief Executive Officer as an ex-officio director will provide it with flexibility to act upon the vote or upon the recommendation of the committee.

• Currently, NASDAQ OMX's Nominating Committee is required to be composed of persons who are not directors or who are directors not standing for reelection. This compositional requirement, which NASDAQ OMX's predecessor, The Nasdaq Stock Market, Inc., originally adopted while it was a wholly owned subsidiary of the National Association of Securities Dealers (''NASD''), is highly unusual for a public company such as NASDAQ OMX. In light of NASDAQ OMX's continued evolution into a public company with global operations, NASDAQ OMX believes that it is appropriate to adopt a standard nominating committee structure in which the committee is composed exclusively of independent directors. Under the amended bylaw, the nominating committee shall consist of four or five directors, each of whom shall be an independent director within the meaning the rules of the NASDAQ Exchange. In addition, the number of Non-Industry Directors (*i.e.,* Directors without material ties to the securities industry) must equal or exceed the number of Industry Directors, and at least two members of the committee must be Public Directors (*i.e.*, directors who have no material business relationship with a broker or dealer, NASDAQ OMX, or its affiliates, or FINRA).

• Article VIII is being amended to provide that NASDAQ OMX shall provide indemnification against liability, advancement of expenses, and the power to purchase and maintain insurance on behalf of persons serving as a director, officer, or employee of any wholly owned subsidiary of NASDAQ OMX to the same extent as indemnification, advancement of expenses, and the power to maintain insurance is provided for directors, officers, or employees of NASDAQ OMX. Thus, for example, a director of one of NASDAQ OMX's U.S. or Nordic exchanges would be entitled to indemnification (and advancement of expenses) by NASDAQ OMX if made a party to a lawsuit to the same extent as a director of NASDAQ OMX. Similarly, the discretionary authority of NASDAQ OMX under Section 8.1(c) of the By-Laws to provide indemnification to persons serving as an agent of NASDAQ OMX is being extended to persons serving as an agent of any wholly owned subsidiary of NASDAQ OMX. Article VIII is also being amended to clarify that any repeal, modification, or amendment of, or adoption of any provision inconsistent with the indemnification and advancement of expenses provided for in Article VIII will not adversely affect the right of any person covered by the provision if the act or omission that any proceeding arises out of or is related to had occurred prior to the time for the repeal, amendment, adoption, or modification.

• Article IX is being amended to modernize the language of the provisions dealing with capital stock to reflect possible participation in the Direct Registration System (''DRS''). DRS provides for the electronic registration of eligible securities in an investor's name on the books of the transfer agent or corporation eliminating the need for physical stock certificates or shares held in book-entry form by the beneficial owner's broker. Although under the Delaware General Corporation Law, NASDAQ OMX can authorize participation in the program through a resolution, the various amendments to Article IX track more closely the language of Section 158 of the Delaware General Corporation Law, as recently revised, to explicitly reference the possibility of capital stock in uncertificated form. The amendments, however, do not require NASDAQ OMX to participate in DRS or to eliminate stock certificates.

• Article XII is being amended to conform certain of its provisions more closely to corresponding provisions in the Amended and Restated By-Laws of NYSE Euronext (''NYSE Euronext By-Laws''). Article XII contains provisions that govern the relationship between NASDAQ OMX and each of its subsidiaries that is a self-regulatory organization. First, the article requires NASDAQ OMX's ''[d]irectors, officers, employees, and *agents*'' (emphasis added) to give due regard to the preservation of the independence of each self-regulatory subsidiary, not to take any actions that would interfere with each self-regulatory subsidiary's regulatory functions, to cooperate with the Commission, to consent to U.S. jurisdiction, and to consent in writing to the applicability of these provisions. Corresponding provisions of Articles VII, VIII, and IX of the NYSE Euronext By-Laws, however, do not include the ambiguous and potentially expansive word ''agent.'' NASDAQ OMX is concerned that a broad construction of the term to include not only parties with which it establishes an explicit contractual agency relationship but also other service providers such as law firms and financial advisors that may act on NASDAQ OMX's behalf on certain occasions may deter some parties from providing services to NASDAQ OMX. However, in lieu of the requirement to obtain specific consents from agents, NASDAQ OMX proposes to adopt a provision from the NYSE Euronext By-Laws providing that NASDAQ OMX shall comply with the U.S. Federal securities laws and the

[5] 15 U.S.C. 78j–1(m). Notably, ''Staff Directors,'' who are officers of NASDAQ OMX serving on the NASDAQ OMX Board, are not considered independent under these provisions, and are therefore ineligible for service on the Audit Committee or Management Compensation Committee or, as discussed below, the newly constituted Nominating Committee.

[6] NASDAQ Exchange Rule 4350(c)(3).

rules and regulations thereunder and shall cooperate with the Commission and the self-regulatory subsidiaries pursuant to and to the extent of their respective regulatory authority and shall take reasonable steps necessary to cause its agents to cooperate with the Commission and where applicable with the self-regulatory subsidiaries pursuant to their regulatory authority. Second, Article XII provides that NASDAQ OMX and its officers, directors, and employees[7] agree to maintain an agent for service of process in the U.S. By contrast, Article VII of the NYSE Euronext By-Laws includes a statement that officers, directors and employees shall be deemed to agree that the Corporation may serve as the U.S. agent for service of process. Accordingly, NASDAQ OMX proposes to adopt this more self-executing version. Finally, while the NASDAQ OMX By-Laws provide that NASDAQ OMX shall take such action as is necessary to insure that officers, directors and employees consent in writing to the applicability of these provisions, Article IX of the NYSE Euronext By-Laws requires only that NYSE Euronext take reasonable steps necessary to cause officers, directors, and employees to consent. Although NASDAQ OMX has begun the process of collecting written consents from current officers, directors, and employees, it believes that the current language may be unreasonably demanding as applied to a multinational exchange operator with over 2,000 employees in over 20 countries. Accordingly, NASDAQ OMX proposes to adopt a version of NYSE Euronext's language, which will require reasonable steps to obtain consent from both current officers, directors, and employees, as well as prospective officers, directors, and employees prior to their acceptance of a position.

2. Statutory Basis

The proposed rule change is consistent with provisions of Section 17A of the Act[8] in general and with Section 17A(b)(3)(A) of the Act,[9] in particular, because it is designed to ensure that BSECC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to enforce compliance by its participants with the rules of the clearing agency. The proposed changes will enhance the clarity of NASDAQ OMX's governance documents and improve its Board committee structures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

BSECC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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) becomes 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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BSECC requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[12] Waiver of the waiting period will ensure that NASDAQ OMX is able to implement the proposed rule change, which has already been approved as a rule of the NASDAQ Exchange, without undue delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission and does not raise any new regulatory issues.[14] For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSECC-2009–04 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–BSECC–2009–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of BSECC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[7] The existing reference to ''agents'' in the sentence is proposed to be deleted.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(A).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] *See infra* note 3.

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSECC-2009-04 and should be submitted on or before September 14, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20193 Filed 8–21–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60511; File No. SR–NYSEAMEX–2009–51]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Amex LLC Adopting Rule 406—NYSE Amex Equities as New Rule 3250—NYSE Amex Equities To Conform to a Proposed Rule Change Submitted in a Companion Filing by the New York Stock Exchange LLC

August 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2009, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 406—NYSE Amex Equities (Designation of Accounts) as new Rule 3250—NYSE Amex Equities to conform to a proposed rule change submitted in a companion filing by the New York Stock Exchange LLC (''NYSE'').[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt Rule 406 NYSE Amex Equities (Designation of Accounts) as new Rule 3250 NYSE Amex Equities to conform to a proposed rule change submitted in a companion filing by the NYSE.[6]

Background

As described more fully in a related rule filing,[7] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC, a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Act.[8] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Amex Trading Systems'') are operated by the NYSE on behalf of the Exchange.[9]

As part of the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems.[10] The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

Proposed Conforming Amendment to NYSE Amex Equities Rules

As noted above, the Exchange proposes to adopt Rule 406—NYSE Amex Equities as new Rule 3250—NYSE Amex Equities to conform to a proposed rule change submitted in a companion filing by the NYSE. As discussed in more detail below, the NYSE is filing the proposed rule change to harmonize the NYSE Rules with a change to corresponding Incorporated NYSE Rules filed by FINRA and approved by the Commission.[11] Unless specifically noted, the Exchange is proposing to adopt the NYSE's proposed rule change in the form that it has been approved for filing by the Commission, subject to such technical changes as are necessary to apply the NYSE's proposed rule change to the Exchange. The Exchange further proposes that the operative date of the rule change be the same as the operative date of the NYSE's proposed rule change on which this filing is based.

Specifically, FINRA adopted FINRA Incorporated NYSE Rule 406

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* SR–NYSE–2009–75, formally submitted on July 28, 2009.

[6] The Commission notes that this proposed rule change would also conform NYSE Amex Rules with a rule change recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission. *See* Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (order approving FINRA 2009–017).

[7] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[8] 15 U.S.C. 78f.

[9] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

[10] See Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63); 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106); 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03); 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10); and 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11).

[11] *See* Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (order approving FINRA 2009–017).

(Designation of Accounts) as consolidated FINRA Rule 3250, subject to some minor technical changes. FINRA Rule 3250 provides that no member shall carry an account on its books in the name of a person other than that of the customer. However, an account may be designated by a number or symbol, provided the member organization has a written statement of ownership signed by the customer.[12]

FINRA adopted FINRA Incorporated NYSE Rule 406 (Designation of Accounts) as consolidated FINRA Rule 3250 because it believes the Rule is an important enforcement tool used to address, *inter alia,* sales practice abuses, including commingling of funds, failure to disclose ownership interests in accounts and unauthorized trading, and should be applied to all FINRA members. In addition, the Rule provides customers and their accounts with a level of anonymity that may be useful while still permitting identification to the member organization carrying the account as well as regulators. Upon adoption of Rule 3250, FINRA made minor technical changes to apply the Rule to all FINRA members, replacing the terms ''member organization'' or ''organization'' with the term ''member.'' [13]

To harmonize the NYSE Rules with the approved FINRA Rules, NYSE correspondingly proposes to adopt NYSE Rule 406 as new Rule 3250, which is substantially similar to the new FINRA rule. As proposed, NYSE Rule 3250 adopts the same language as FINRA Rule 3250, except for retaining or adding, as needed, the term ''member organization'' and making corresponding technical changes. As with the consolidated FINRA Rule, under proposed NYSE Rule 3250 Exchange member organizations will be required to carry customer accounts in the name of the customer, except that an account may be designated by a number or symbol, as long as the member maintains documentation identifying the customer.[14]

The Exchange proposes to correspondingly adopt Rule 406—NYSE Amex Equities as new Rule 3250—NYSE Amex Equities in the form proposed by the NYSE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will ensure the elimination of any potential regulatory gap among the Exchange's, the NYSE's and FINRA's rules. Therefore, the Commission designates the proposal operative upon filing.[19]

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–NYSEAMEX–2009–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMEX–2009–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available

[12] *Id.* As noted by FINRA, member organizations are subject to additional requirements regarding customer accounts under the Act. *See, e.g.,* 17 CFR 240.17a–3(a)(9) (requiring records indicating the name and address of the beneficial owner of cash and margin customer accounts).

[13] *See* Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009).

[14] *See* SR–NYSE–2009–75, formally submitted on July 28, 2009.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

for inspection and copying at the principal office of the Exchange and on its Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMEX–2009–51 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20198 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60510; File No. SR–FICC–2009–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Change To Modify the Rules of the Government Securities Division Regarding the Calculation of Clearing Fund Deposits Relating to Inter-Dealer Broker Positions

August 17, 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 August 10, 2009, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and is granting accelerated approval of the proposal through August 20, 2010.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to modify the rules of FICC's Government Securities Division (''GSD'') regarding the calculation of clearing fund deposits relating to inter-dealer broker positions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The GSD maintains a clearing fund comprised of member deposits of cash and eligible securities to provide liquidity and to enable FICC to satisfy any losses that might otherwise be incurred as a result of a member's default and the subsequent close-out of its positions. GSD uses a Value-at-Risk (''VaR'') methodology to calculate clearing fund requirements.[4] The clearing fund methodology used by GSD analyzes risk by reference to three factors: (i) End-of-day VaR charge to assess market volatility for observed open positions at the end-of-day after giving effect to offsetting positions within the portfolio; (ii) margin requirement differential (''MRD'') to address intraday risk; and (iii) coverage component (''CC'') to adjust the calculation if necessary to reach a given confidence level. The margin calculation is predicated upon an assumption that the open positions of a defaulting member would be liquidated at the end of a three-day period.

Inter-dealer brokers (''IDBs'') function as intermediaries trading with multiple counterparties and with respect to government securities trades, provide anonymity and liquidity for trading partners. IDBs operate on small spreads, handle large transactions, and perform a critical function in the government securities market in the absence of a centralized trading exchange.

IDBs submit affirmed trades from their systems to GSD, each trade already matched to the counterparty that will ultimately deliver or receive the securities. Although IDBs generally do not maintain positions, they may have positions versus GSD when their counterparties are not GSD members. Because these trades are matched by the IDB to a counterparty prior to submission to the GSD, the risk to FICC in the case of an IDB's default is different from that presented when a dealer member submits a trade that may not have been already matched to a counterparty.

The clearing fund requirement applicable to IDBs has increased significantly because of recent market volatility to the point where FICC believes it is disproportionate to the risk that IDB activity presents to GSD. Given the importance of IDB transactions in the government securities marketplace, unsustainable margin requirements on GSD IDB activity may be harmful and may introduce systemic risk in the event members are motivated to avoid imposition of disproportionate changes by netting outside of GSD or by delaying trade submission until later in the day.[5]

To alleviate this situation, FICC is proposing to use a one-day liquidation assumption when calculating margin applicable to IDB activity.[6] The assumption of a three-day liquidation period will continue to apply to non-IDB activity. Since IDB trades are matched prior to submission, FICC believes that the one-day liquidation period is a reasonable assumption. FICC will continue to monitor the IDB activity of its members and will periodically reassess whether the one-day liquidation period provides adequate coverage. In this regard, FICC will provide the Commission with data to allow the Commission to track the magnitudes and behaviors of the VaR for a one-day liquidation horizon and for a three-day liquidation horizon, and with such other information that the Commission may request. FICC further notes its ability to impose special charges in response to market circumstances or other risk factors with respect to a particular member.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because the proposed change will modify the calculation of clearing fund deposits of IDB positions so that the clearing fund contribution is

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] VaR is defined as the maximum amount of money that may be lost on a given portfolio over a given period of time within a given level of confidence.

[5] Accordingly, GSD invoked its emergency power to adjust CC to IDB transactions in November 2008 and conducted a review of the current margin methodology as applied to IDB activity. As a result, CC currently is not calculated with respect to inter-dealer broker repo transactions, and GSD has recently adjusted the CC charge with respect to certain cash IDB transactions on a temporary basis.

[6] Margin calculated for all other activity is based on a three-day liquidation horizon.

[7] U.S.C. 78q–1.

correlated more closely with the level of risk associated with IDB positions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[8] Section 17A(b)(3)(F) requires that the rules of a clearing agency remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest. The Commission finds that the approval of FICC's rule change is consistent with this section because it will allow FICC to modify its rules regarding the calculation of clearing fund deposits on inter-dealer broker positions to correlate more closely those deposits with the level of risk associated with such positions.

FICC has requested that the Commission approve the proposed rule prior to the thirtieth day after publication of the notice of the amended filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow FICC to better correlate inter-dealer broker clearing fund deposits with the level of risk associated with their positions immediately.

The Commission is approving the proposed rule filing on a temporary basis through August 20, 2010, so that FICC will have time to evaluate the modified calculation of clearing fund deposits on inter-dealer broker positions and to report its findings to the Commission before the Commission decides on permanent approval.

[8] U.S.C. 78q–1(b)(3)(F).

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–FICC–2009–08 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–FICC–2009–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/ficc/2009-08.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2009–08 and should be submitted on or before September 14, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–FICC–2009–08) be and hereby is approved on an accelerated basis through August 20, 2010.[10]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20197 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(2).

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60512; File No. SR–NYSE–2009–75]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by New York Stock Exchange LLC Adopting NYSE Rule 406 as New Rule 3250 To Correspond With a Rule Change Recently Filed by the Financial Industry Regulatory Authority, Inc.

August 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt NYSE Rule 406 (Designation of Accounts) as new Rule 3250 to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

correspond with a rule change recently filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Commission.[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt NYSE Rule 406 (Designation of Accounts) as new Rule 3250 to correspond with a rule change recently filed by FINRA and approved by the Commission.[6]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act,[7] NYSE, NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules'').[8] As part of its effort to reduce regulatory duplication and relieve firms that are members of both FINRA and the Exchange of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[9]

Proposed Conforming Amendment to NYSE Rules

As discussed in more detail below, FINRA adopted FINRA Incorporated NYSE Rule 406 (Designation of Accounts) as consolidated FINRA Rule 3250, subject to some minor technical changes. The NYSE hereby proposes to adopt NYSE Rule 406 as new Rule 3250 to conform to the rule change adopted by FINRA.[10]

Specifically, FINRA Incorporated NYSE Rule 406 provides that no NYSE member organization shall carry an account on its books in the name of a person other than that of the customer. However, an account may be designated by a number or symbol, provided the member organization has a written statement of ownership signed by the customer. This Rule has been used to address, inter alia, sales practice abuses, including commingling of funds, failure to disclose ownership interests in accounts and unauthorized trading.[11]

FINRA adopted FINRA Incorporated NYSE Rule 406 as consolidated FINRA Rule 3250 because it believes the Rule is an important enforcement tool and should be applied to all FINRA members and not just Dual Members. In addition, the Rule provides customers and their accounts with a level of anonymity that may be useful while still permitting identification to the member organization carrying the account as well as regulators. Upon adoption of Rule 3250, FINRA made minor technical changes to apply the Rule to all FINRA members, replacing the terms ''member organization'' or ''organization'' with the term ''member.''[12]

To harmonize the NYSE Rules with the approved FINRA Rules, the Exchange correspondingly proposes to adopt NYSE Rule 406 as new Rule 3250, which is substantially similar to the new FINRA Rule. As proposed, NYSE Rule 3250 adopts the same language as FINRA Rule 3250, except for retaining or adding, as needed, the term ''member organization'' and making corresponding technical changes. As with the consolidated FINRA Rule, under proposed NYSE Rule 3250 Exchange member organizations will be required to carry customer accounts in the name of the customer, except that an account may be designated by a number or symbol, as long as the member maintains documentation identifying the customer.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if

[5] *See* Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (order approving FINRA 2009–017).

[6] *Id.*

[7] 17 CFR 240.17d–2.

[8] *See* Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement) and Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''). Paragraph 2(b) of the 17d–2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

[9] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[10] NYSE Amex LLC has submitted a companion rule filing to conform its corresponding NYSE Amex Equities Rules to the changes proposed in this filing. *See* SR–NYSE–Amex–2009–51, formally submitted July 28, 2009.

[11] *See* Securities Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009).

[12] *Id.*

[13] *Id.* As noted by FINRA, member organizations are subject to additional requirements regarding customer accounts under the Act. *See, e.g.*, 17 CFR 240.17a–3(a)(9) (requiring records indicating the name and address of the beneficial owner of cash and margin customer accounts).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly conform its rule with the approved FINRA Rule, and will ensure the elimination of any potential regulatory gap and that the NYSE Rules maintain their status as Common Rules under the Agreement. Therefore, the Commission designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange and on its Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–75 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20196 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60513; File No. SR–CBOE–2009–059]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

August 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 12, 2009, Chicago Board Options Exchange, Incorporated (''CBOE'' or 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 CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,[1] and Rule 19b–4(f)(2) thereunder,[2] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is below. Additions are in *italics*. Deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Incorporated Fees Schedule

[August] *September* 1, 2009

1.–4. Unchanged.
Footnotes:
(1)–(17) Unchanged.
5.–11. Unchanged.
12. Regulatory Fees:

A) Options Regulatory Fee: $.004 per contract*

*The Options Regulatory Fee is assessed by CBOE to each member for all options transactions executed *or cleared* by the member that are cleared by The Options Clearing Corporation (OCC) in the customer range, excluding Linkage orders, regardless of the exchange on which the transaction occurs. The fee is collected indirectly from members through their clearing firms by OCC on behalf of CBOE. There is a minimum one-cent charge per trade.

Remainder of Fees Schedule—Unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(3)(A)(ii).

[2] 17 CFR 240.19b–4(f)(2).

rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

(a) Purpose

The Exchange charges an Options Regulatory Fee (''ORF'') of $.004 per contract to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, excluding Options Intermarket Linkage Plan (''Linkage'') orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. There is a minimum one-cent charge per trade.[3]

The Exchange proposes to amend the ORF to also include options transactions that are not executed by a CBOE member but are ultimately cleared by a CBOE member. Thus the Exchange would charge a member $.004 per contract for all options transactions executed or cleared by the member that are cleared by OCC in the customer range, excluding Linkage orders, regardless of the marketplace of execution. In the case where one member both executes a transaction and clears the transaction, the ORF would be assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF would be assessed only to the member who executes the transaction and would not be assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF would be assessed to the member who clears the transaction.[4]

The Exchange believes that its broad regulatory responsibilities with respect to its members'' activities, as described in the Original Filing, supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activity, including performing surveillance for position limit violations, manipulation, insider trading, frontrunning and contrary exercise advice violations.

The Exchange expects that the proposed rule change would increase ORF revenue by less than two percent. As stated in the Original Filing, the ORF is designed to generate revenue that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs. If the Exchange determines regulatory revenues would exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies members of adjustments to the ORF via regulatory circular.

The proposed fee change would become operative on September 1, 2009, in order to give members time to implement the revised fee.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposed rule change is reasonable because it relates to the recovery of the costs of supervising and regulating CBOE members. The Exchange believes the proposed rule change is equitable because the ORF would be charged to all members on all of their business that clears as customer at the OCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–059. 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

[3] The ORF was established in October 2008 as a replacement of Registered Representative (''RR'') fees. *See* Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (''Original Filing''). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the ORF for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. *See* Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009). To avoid a regulatory revenue shortfall for 2009 due to the waivers of the fee, the Exchange increased the ORF for 2009 from $.0045 per contract to $.006 per contract. *See* Securities Exchange Act Release No. 59427 (February 20, 2009), 74 FR 9013 (February 27, 2009). The Exchange reduced the ORF from $.006 per contract to $.004 per contract, effective August 1, 2009. See Securities Exchange Act Release No. 60093 (June 10, 2009), 74 FR 28749 (June 17, 2009).

[4] *See* e-mail to Richard Holley III, Senior Special Counsel, from Jaime Galvan, Senior Attorney, CBOE, dated August 17, 2009 (clarifying the operation of the proposed change to extend the ORF to clearing activity).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–059 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20195 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60494; File No. SR–SCCP–2009–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

August 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 22, 2009, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change described in Items I and II below, which items have been prepared primarily by SCCP. SCCP filed the proposed rule change under Rule 19b–4(f)(6) under the Act[2] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP is filing this proposed rule change with regard to proposed changes to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The proposed rule change will be implemented as soon as practicable following submission of this filing. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at SCCP's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX made certain amendments to its by-laws to update its by-laws and to make improvements in its governance. In SR–NASDAQ–2009–039, The NASDAQ Stock Market LLC (''NASDAQ Exchange'') sought and received Commission approval to adopt these by-law changes as part of the rules of the NASDAQ Exchange.[4] SCCP is submitting this filing to adopt the same by-law changes as rules of SCCP.

The proposed changes to the by-laws are as follows:

- Article I is being amended to reflect the recent name changes of the Philadelphia Stock Exchange and the Boston Stock Exchange to NASDAQ OMX PHLX, Inc. and NASDAQ OMX BX, Inc., respectively.
- Article III is being amended to modify the procedures governing proposals by stockholders, including proposals by stockholders to nominate directors. Specifically, the amendment will require a stockholder making a proposal to supply more complete information about the stockholder's background, including a description of any agreement, arrangement, or understanding between the stockholder, the beneficial owner of the stock, and any other persons acting in concert with them; a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares), the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of NASDAQ OMX; and any other information regarding the stockholder and beneficial owner that would be required to be disclosed in a proxy statement under Section 14(a) of the Act. These changes are designed to provide the NASDAQ OMX Board of Directors and its stockholders with greater insight into the identity and intentions of persons presenting stockholder proposals to allow more thorough consideration of the merits of such proposals. These requirements are deemed satisfied, however, in the case of a proposal that is validly submitted under the rules and regulations promulgated under the Act (*i.e.* , SEC Rule 14a–8) and included in NASDAQ OMX's proxy. However, compliance with the By-Laws or with SEC Rule 14a–8 provides the exclusive means for stockholders to make proposals. The amendments also provide that a representative of a stockholder qualified to appear at an annual meeting must be an officer, manager, or partner of the stockholder or must have written authorization from the stockholder. The amendments also make several minor clarifying changes to the text of Article III.
- Article IV is being amended to state explicitly that the Management Compensation Committee and the Audit Committee must be composed exclusively of independent directors within the meaning of the rules of the NASDAQ Stock Market that govern NASDAQ OMX's listing (and in the case of the Audit Committee, Section 10A of

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[9] CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(f)(6).

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Securities Exchange Act Release No. 59858 (May 4, 2009), 74 FR 22191 (May 12, 2009) (SR–NASDAQ–2009–039); Securities Exchange Act Release No. 60183 (June 26, 2009), 74 FR 32207 (July 7, 2009) (SR–NASDAQ–2009–039).

the Act).[5] Although NASDAQ OMX adheres scrupulously to the independence requirements imposed by the NASDAQ Stock Market and the Act, it believes that these requirements should be explicitly stated in the By-Laws as well. NASDAQ OMX is also removing language making its Chief Executive Officer an ex-officio, non-voting member of the Management Compensation Committee. In this regard, listing standards of the NASDAQ Stock Market require management compensation determinations regarding executive officers to be made by vote of the Board's independent directors or by vote of or upon the recommendation of a committee composed solely of independent directors.[6] NASDAQ OMX has satisfied this requirement by submitting compensation decisions to the vote of all of NASDAQ OMX's independent directors, but removing the Chief Executive Officer as an ex-officio director will provide it with flexibility to act upon the vote or upon the recommendation of the committee.

• Currently, NASDAQ OMX's Nominating Committee is required to be composed of persons who are not directors or who are directors not standing for reelection. This compositional requirement, which NASDAQ OMX's predecessor, The Nasdaq Stock Market, Inc., originally adopted while it was a wholly owned subsidiary of the National Association of Securities Dealers (''NASD''), is highly unusual for a public company such as NASDAQ OMX. In light of NASDAQ OMX's continued evolution into a public company with global operations, NASDAQ OMX believes that it is appropriate to adopt a standard nominating committee structure in which the committee is composed exclusively of independent directors. Under the amended bylaw, the nominating committee shall consist of four or five directors, each of whom shall be an independent director within the meaning the rules of the NASDAQ Exchange. In addition, the number of Non-Industry Directors (*i.e.*, Directors without material ties to the securities industry) must equal or exceed the number of Industry Directors, and at least two members of the committee must be Public Directors (*i.e.*, directors who have no material business relationship with a broker or dealer, NASDAQ OMX, or its affiliates, or FINRA).

• Article VIII is being amended to provide that NASDAQ OMX shall provide indemnification against liability, advancement of expenses, and the power to purchase and maintain insurance on behalf of persons serving as a director, officer, or employee of any wholly owned subsidiary of NASDAQ OMX to the same extent as indemnification, advancement of expenses, and the power to maintain insurance is provided for directors, officers, or employees of NASDAQ OMX. Thus, for example, a director of one of NASDAQ OMX's U.S. or Nordic exchanges would be entitled to indemnification (and advancement of expenses) by NASDAQ OMX if made a party to a lawsuit to the same extent as a director of NASDAQ OMX. Similarly, the discretionary authority of NASDAQ OMX under Section 8.1(c) of the By-Laws to provide indemnification to persons serving as an agent of NASDAQ OMX is being extended to persons serving as an agent of any wholly owned subsidiary of NASDAQ OMX. Article VIII is also being amended to clarify that any repeal, modification, or amendment of, or adoption of any provision inconsistent with the indemnification and advancement of expenses provided for in Article VIII will not adversely affect the right of any person covered by the provision if the act or omission that any proceeding arises out of or is related to had occurred prior to the time for the repeal, amendment, adoption, or modification.

• Article IX is being amended to modernize the language of the provisions dealing with capital stock to reflect possible participation in the Direct Registration System (''DRS''). DRS provides for the electronic registration of eligible securities in an investor's name on the books of the transfer agent or corporation eliminating the need for physical stock certificates or shares held in book-entry form by the beneficial owner's broker. Although under the Delaware General Corporation Law, NASDAQ OMX can authorize participation in the program through a resolution, the various amendments to Article IX track more closely the language of Section 158 of the Delaware General Corporation Law, as recently revised, to explicitly reference the possibility of capital stock in uncertificated form. The amendments, however, do not require NASDAQ OMX to participate in DRS or to eliminate stock certificates.

• Article XII is being amended to conform certain of its provisions more closely to corresponding provisions in the Amended and Restated By-Laws of NYSE Euronext (''NYSE Euronext By-Laws''). Article XII contains provisions that govern the relationship between NASDAQ OMX and each of its subsidiaries that is a self-regulatory organization. First, the article requires NASDAQ OMX's ''[d]irectors, officers, employees, and *agents*'' (emphasis added) to give due regard to the preservation of the independence of each self-regulatory subsidiary, not to take any actions that would interfere with each self-regulatory subsidiary's regulatory functions, to cooperate with the Commission, to consent to U.S. jurisdiction, and to consent in writing to the applicability of these provisions. Corresponding provisions of Articles VII, VIII, and IX of the NYSE Euronext By-Laws, however, do not include the ambiguous and potentially expansive word ''agent.'' NASDAQ OMX is concerned that a broad construction of the term to include not only parties with which it establishes an explicit contractual agency relationship but also other service providers such as law firms and financial advisors that may act on NASDAQ OMX's behalf on certain occasions may deter some parties from providing services to NASDAQ OMX. However, in lieu of the requirement to obtain specific consents from agents, NASDAQ OMX proposes to adopt a provision from the NYSE Euronext By-Laws providing that NASDAQ OMX shall comply with the U.S. Federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission and the self-regulatory subsidiaries pursuant to and to the extent of their respective regulatory authority and shall take reasonable steps necessary to cause its agents to cooperate with the Commission and where applicable with the self-regulatory subsidiaries pursuant to their regulatory authority. Second, Article XII provides that NASDAQ OMX and its officers, directors, and employees[7] agree to maintain an agent for service of process in the U.S. By contrast, Article VII of the NYSE Euronext By-Laws includes a statement that officers, directors, and employees shall be deemed to agree that the Corporation may serve as the U.S. agent for service of process. Accordingly, NASDAQ OMX proposes to adopt this more self-executing version. Finally, while the NASDAQ OMX By-Laws provide that NASDAQ OMX shall take such action as is necessary to insure that officers, directors, and employees

[5] 15 U.S.C. 78j–1(m). Notably, ''Staff Directors,'' who are officers of NASDAQ OMX serving on the NASDAQ OMX Board, are not considered independent under these provisions, and are therefore ineligible for service on the Audit Committee or Management Compensation Committee or, as discussed below, the newly constituted Nominating Committee.

[6] NASDAQ Exchange Rule 4350(c)(3).

[7] The existing reference to ''agents'' in the sentence is proposed to be deleted.

consent in writing to the applicability of these provisions, Article IX of the NYSE Euronext By-Laws requires only that NYSE Euronext take reasonable steps necessary to cause officers, directors, and employees to consent. Although NASDAQ OMX has begun the process of collecting written consents from current officers, directors, and employees, it believes that the current language may be unreasonably demanding as applied to a multinational exchange operator with over 2,000 employees in over 20 countries. Accordingly, NASDAQ OMX proposes to adopt a version of NYSE Euronext's language, which will require reasonable steps to obtain consent from both current officers, directors, and employees, as well as prospective officers, directors, and employees prior to their acceptance of a position.

2. Statutory Basis

The proposed rule change is consistent with provisions of Section 17A of the Act [8] in general and with Section 17A(b)(3)(A) of the Act [9] in particular because it is designed to ensure that SCCP is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to enforce compliance by its participants with the rules of the clearing agency. The proposed changes will enhance the clarity of NASDAQ OMX's governance documents and improve its Board committee structures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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) becomes 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 [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. SCCP requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[12] Waiver of the waiting period will ensure that NASDAQ OMX is able to implement the proposed rule change, which has already been approved as a rule of the NASDAQ Exchange, without undue delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission and does not raise any new regulatory issues.[14] For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–SCCP–2009–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–SCCP–2009–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of SCCP. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–SCCP–2009–03 and should be submitted on or before September 14, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20194 Filed 8–21–09; 8:45 am]

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[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(A).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] *See infra* note 3.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60504; File No. SR–BX–2009–047]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility

August 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 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 filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Orders on BOX which are not executable against the BOX Book are routed via the InterMarket Linkage System (''Linkage Orders'') to away exchanges for execution. The Exchange proposes to exempt outbound Principal Acting as Agent (''P/A'') Linkage Orders from both the Liquidity Make or Take Pricing Structure and the Non-Penny Pilot Class Pricing Structure as these transactions are deemed to neither ''add'' nor ''take'' liquidity from the BOX Book. Instead these orders will follow the Intermarket Linkage pricing as described in Section 4(a)2 of the Fee Schedule (*i.e.*, free), regardless of whether the class is contained in the Liquidity Make or Take Pricing Structure or the Non-Penny Pilot Class Pricing Structure or not. The proposed change will have no effect on the billing of orders of non-Participants, including any orders received through Intermarket Linkage.

For example, if a Public Customer order is entered into the BOX Trading Host and is routed to an away market as an outbound P/A Order, the routing of the Public Customer's order will be free, regardless of class. Prior to this proposal such a transaction may have been subject to the fees and credits set forth in either the Liquidity Make or Take Pricing Structure, resulting in the applicable ''take'' fee (currently $0.45), or the Non-Penny Pilot Class Pricing Structure, resulting in the applicable ''removal'' credit (currently $0.30), of Sections 7 and 8 of the Fee Schedule, respectively.

The Exchange requests that the effective date of the proposed rule change be August 12, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the proposed change will allow the Exchange to charge the appropriate fees and provide the appropriate credits with respect to orders routed by BOX to away exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act and Rule 19b–4(f)(2) thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–2009–047 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–2009–047. 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/*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

rules/sro/shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BX–2009–047 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20192 Filed 8–21–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60518; File No. SR–NYSEArca–2009–70]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 10.12 (Minor Rule Plan)

August 18, 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 July 29, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 10.12–Minor Rule Plan. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE Arca Minor Rule Plan (''MRP'') fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Options Trading Permit (''OTP'') Holders, OTP Firms and associated persons. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of OTP Holders, OTP Firms and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange's rules. By promptly imposing a meaningful financial penalty for such violations, the MRP focuses on correcting conduct before it gives rise to more serious enforcement action.

The Exchange is now proposing to incorporate additional violations into the MRP, these violations include (i) trading in restricted classes; and (ii) failure to report position and account information. The Exchange is also proposing to increase fine levels for certain violations presently included in the MRP. The increases [sic] fine levels will be applicable for violations of due diligence, priority rules and order exposure rules. A brief description of each proposed changes [sic] is shown below.

Proposed Rules 10.12(h)(22) and 10.12(k)(i)(22)

NYSE Arca Rule 5.4(a) provides, with limited exceptions, that the Exchange may prohibit any opening purchase transactions in a series of options to the extent it deems such action necessary or appropriate. Accordingly, OTP Holders effecting opening transactions in restricted series, that are inconsistent with the terms of any such restriction, will be considered to be in violation of Rule 5.4(a). The Exchange is proposing to incorporate violations related to trading in restricted series into the MRP under Exchange Rule 10.12(h)(22).

The Exchange is proposing to implement a fine of $1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a $2,500 fine and a third violation would be allocated a $5,000 fine. The schedule of fines will be included under Rule 10.12(k)(i)(22). Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Arca believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

NYSE Arca believes that in most cases these violations may be handled efficiently through the MRP, however, as with other violations, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.

Proposed Rules 10.12(h)(23) and 10.12(k)(i)(23)

Among other things, Rule 6.6(a) requires each OTP Holder and OTP Firm to report to the Exchange the account and position information of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. OTP Holders and OTP Firms report this information on the Large Option Position Report (''LOPR'').

NYSE Arca is proposing to incorporate violations for failing to accurately report position and account information in accordance with Rule 6.6(a) into the MRP. The Exchange believes most of these violations are inadvertent and technical in nature. Not having LOPR reporting violation necessarily subject to formal

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

disciplinary proceedings will allow the Exchange to more expeditiously process routine violations under the MRP Plan.

In addition, NYSE Arca, as a member of the Intermarket Surveillance Group (''ISG''), as well as certain other self-regulatory organizations, have entered into an agreement pursuant to Section 17(d) of the Securities Exchange Act of 1934 (as amended) (''17d–2 Agreement''), which incorporates the surveillance and sanctions of LOPR reporting violations. As such, the SROs have agreed that their respective rules concerning the reporting of large option positions are common rules. As a result, adding LOPR reporting violations to the MRP will further result in the consistency of rules among SROs who are parties to the 17d–2 Agreement with respect to LOPR reporting surveillance.

The Exchange is proposing to implement a fine of $1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a $2,500 fine and a third violation would be allocated a $5,000 fine. The schedule of fines will be included under Rule 10.12(k)(i)(23). Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Arca believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

NYSE Arca believes that in most cases these LOPR reporting violations may be handled efficiently through the MRP, however, as with other violations, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.

Changes to Rule 10.12(k)(i)(1), Rule 10.12(k)(i)(34), and Rule 10.12(k)(i)(40)

NYSE Arca Rule 6.46(a) requires that a Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange. Violators of Rule 6.46(a) are subject to a sanction pursuant to the MRP, specifically, Rule 10.12(k)(i)(1). Suggested fines for violations of Rule 6.46(a) are presently $1,000 for the first violation in a rolling twenty-four month period, $2,500 for a second violation within the same period fine and a third violation is subject to a $3,500 fine.

NYSE Arca Rule 6.47A is designed to ensure that orders are properly exposed on the NYSE Arca electronic trading system prior to interaction by the initiating firm. The rule states that users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule prevents a user from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book. Violators of Rule 6.47A are subject to a sanction pursuant to the MRP, specifically, Rule 10.12(k)(i)(34). Suggested fines for violations of Rule 6.47A are presently $500 for the first violation in a rolling twenty-four month period, $1,000 for a second violation within the same period fine and a third violation is subject to a $2,500 fine.

NYSE Arca Rule 6.75 governs the priority of bids and offers in open outcry trading. In general, Rule 6.75 states that the highest bid/lowest offer shall have priority over all other orders. In the event there are two or more bids/offers for the same option contract representing the best price and one such bid/offer is displayed in the Consolidated Book, such bid shall have priority over any other bid at the post. In addition, if two or more bids/offers represent the best price and a bid/offer displayed in the Consolidated Book is not involved, priority shall be afforded to such bids in the sequence in which they are made. Rule 6.75 also contains certain provisions for [sic] related to split-price priority and priority of complex orders. Violators of any part of Rule 6.75 are subject to a sanction pursuant to the MRP, specifically Rule 10.12(k)(i)(40). Suggested fines for violations of Rule 6.75 are presently $500 for the first violation in a rolling twenty-four month period, $1,000 for a second violation within the same period fine and a third violation is subject to a $2,000 fine.

At this time the Exchange believes the current monetary fine levels contained in the MRP, for the above mentioned violations, are inadequate, given the serious nature of these rules. In order to act as an effective deterrent against future violations, while also serving as a just penalty for those who commit these violations, the Exchange feels an increase in the fine levels for these three violations is warranted. NYSE Arca now proposes fine levels of $1,000 for the first violation in a rolling twenty-four month period, $2,500 for a second violation within the same period fine and $5,000 for a third violation within the same period fine. These fine levels will apply to all three types of violations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [3] of the Act, in general, and furthers the objectives of Section 6(b)(5) [4] in particular in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposal is also consistent with Section 6(b)(6) [5] and 6(b)(7),[6] which requires that members and persons associated with members are appropriately disciplined for violations of Exchange rules and are provided a fair procedure for disciplinary procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78f(b)(7).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NYSEArca–2009–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–70 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20241 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Proposed system of records and routine uses: Correction.

SUMMARY: We are issuing public notice of our intent to establish a new system of records and routine uses applicable to this system of records in accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)). The proposed system of records is entitled the *Race and Ethnicity Collection System* (60–0104), hereinafter referred to as the *RECS* system of records. We discuss the system of records in the Supplementary Information section below. We invite public comments on this proposal. We published this proposed system of records on August 19, 2009 (document 2009–19935), with an effective date of October 9, 2009, unless we receive comments before that date that would result in a contrary determination. This current notice corrects the effective date of the proposed *RECS* system of records and routine uses, per below.

DATES: We filed a report of the proposed *RECS* system of records and routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 13, 2009. The proposed *RECS* system of records and routine uses will become effective on September 28, 2009, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested persons may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments we receive will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Alicia Matthews, Social Insurance Specialist (Senior Analyst), Disclosure Policy Development and Services Division 1, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–1723, e-mail: *alicia.matthews@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed *RECS* System of Records

A. General Background

In October 1997, the Office of Management and Budget (OMB) announced revised government-wide standards for Federal agencies collecting race and ethnicity (RE) data (62 FR 58782, Oct. 30, 1997, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*).

We need RE data for program evaluation, research, and statistical reporting purposes. We do not use RE data to make decisions about a person's application for benefits or any other programmatic determination. Prior to 1987, we collected RE data from persons on a voluntary basis when they applied for either original or replacement Social Security number (SSN) cards. Since 1987, however, we have issued most original SSN cards through an enumeration-at-birth program (EAB), which is administered by the States. As the States do not collect RE information, we do not maintain RE information for EAB applicants. Since 2002, the Department of Homeland Security (DHS) has taken applications for SSN cards from aliens entering the United States through the enumeration-at-entry (EAE) program. DHS does not provide us with RE information on EAE applicants.

We currently maintain the RE data that we collect in an existing Privacy Act system of records, the *Master Files of SSN Number Holders and SSN Applications.* The RE data we currently collect is limited to these categories: Asian, Asian-American or Pacific Islander; Hispanic; Black (Not Hispanic); North American Indian or Alaskan Native; and White (Not Hispanic). Under the current standards, persons who provide us race information can designate only one of the categories, and they do not have the option of designating both their race and ethnicity.

We will no longer collect RE information using our limited categories. Pursuant to the OMB mandated standards, we will use the following categories to collect RE information:

Race

- Alaska Native,
- American Indian,
- Asian,
- Black/African American,
- Native Hawaiian,
- Other Pacific Islander, and
- White.

Ethnicity

- Hispanic/Latino.

Under the OMB standards, persons may voluntarily designate one or more categories under ''Race'' and designate ''yes'' or ''no'' under the ''Ethnicity'' category.

We will collect RE information that conforms to the OMB standards for the continuing purposes of program evaluation, research, and statistical reporting. Using the OMB standards, we will maintain all future collections of RE data in a separate electronic system covered by the proposed *RECS* system of records. The proposed *RECS* system of records will cover RE data about persons issued original or replacement SSN cards who do not apply through the EAB or EAE programs.

B. Collection and Maintenance of the Data for the Proposed RECS System of Records

We will collect, maintain, and retrieve personally identifiable information (*i.e.,* SSNs) of persons who voluntarily provide their RE data when they request an original or replacement SSN card from us in an electronic system covered by the proposed *RECS* system of records. Therefore, the RECS information collection is a system of records as defined by the Privacy Act.

II. Proposed Routine Use Disclosures of Data Covered by the Proposed *RECS* System of Records

A. Proposed Routine Use Disclosures

We are proposing to establish the following routine uses of the information covered by the proposed *RECS* system of records.

1. *To the Office of the President in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.*

We will disclose RE information under this routine use only when the Office of the President makes an inquiry relating to information contained in this system of records and indicates that it is acting on behalf of the person whose record is requested.

2. *To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.*

We will disclose RE information under this routine use only when a member of Congress, or member of his or her staff, makes an inquiry relating to information contained in this system of records and indicates that he or she is acting on behalf of the person whose record is requested.

3. *To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:*

(a) SSA or any of our components;

(b) Any SSA employee in his or her official capacity;

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect the operations of SSA or any of our components, is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

We will disclose RE information under this routine use as necessary to enable DOJ to effectively defend us, our components, or our employees in litigation when the use of information from the proposed system of records is relevant and necessary to the litigation and compatible with the purpose of the information collection. We will also disclose information to ensure that courts, other tribunals, and parties before such courts or tribunals, have appropriate information when relevant and necessary.

4. *To a Federal, State, or congressional support agency (e.g., Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to:*

(a) Releasing information to assess the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits or other programs under the Social Security Act;

(b) Examining the distribution of benefits under programs of the Social Security Act by economic and demographic groups and how these differences might be affected by possible changes in policy;

(c) Analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and,

(d) Analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test.

We may make these disclosures if we:

(1) Determine that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(2) Determine that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies a person;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the person which such limited additional exposure of the record might bring;

(iii) Has a reasonable probability of being accomplished;

(iv) Is of importance to the programs under the Social Security Act and beneficiaries of such programs or is for an epidemiological research project that relates to programs under the Social Security Act or beneficiaries of such programs;

(3) Require the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by our employees, our agents, or by independent agents of the recipient agency of those safeguards;

(ii) Remove or destroy the information that enables the person to be identified at the earliest time that the recipient can do so consistent with the purpose of the project, unless the recipient receives written authorization from us that it is justified, based on research objectives, in retaining such information;

(iii) Make no further use of the records except:

(a) Under emergency circumstances affecting the health and safety of a person following written authorization from us;

(b) For disclosure to an identified person approved by us for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about a person;

(4) Secure a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

The use of the revised OMB standards, which include more categories, will permit us to develop richer and more comprehensive information that can be used in actuarial, epidemiological, economic, and other social science projects that will ultimately benefit us, the public, and other Federal, State, or congressional support agencies' programs. The use of the information will allow new studies to occur regarding the administration of the Social Security program and other related purposes that we and other agencies might not otherwise undertake due to the lack of data. Other related purposes include studies conducted by the Centers for Medicare and Medicaid Services to address health care disparities on the basis of race, ethnicity, and gender for Medicare and Medicaid beneficiaries under Titles XVIII and XIX of the Social Security Act.

5. *To our contractors and grantees performing program evaluation, research, and statistical activities directly relating to this system of records, and to contractors or grantees for another Federal or State agency performing such activities.*

We occasionally contract out certain agency functions when doing so contributes to effective and efficient operations. Other Federal and State agencies also occasionally use contractors or grantees to perform program evaluation and analysis. We must be able to give the contractor or grantee the information needed to fulfill the contract requirements. In these situations, we require safeguards in the contract that prohibit the contractor from using or disclosing the information for any purpose other than that described in the contract. We also assure that contractors for other Federal and State agencies adhere to these safeguards.

6. *To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they are performing work for us as authorized by law, and they need access to information in our records in order to perform their assigned agency duties.*

We will disclose RE information under this routine use only when we use the services of student volunteers and participants in certain educational, training, employment, and community service programs when they need access to RE information in this system to perform their assigned agency duties.

7. *To the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.*

We will disclose RE information under this routine use only when it is necessary for GSA and NARA to have access to the information covered by this proposed system of records. The Administrator of GSA and the Archivist of NARA are authorized by Title 44 U.S.C. 2904, as amended, to promulgate standards, procedures, and guidelines regarding records management and conducting records management studies. Title 44 U.S.C. 2906, as amended, provides that GSA and NARA are authorized to inspect Federal agencies' records for records management purposes and that agencies are to cooperate with GSA and NARA.

8. *To the appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or our other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.*

We will disclose RE information under this routine use specifically in connection with response and remediation efforts in the event of an unintentional release of agency information, otherwise known as a ''data security breach.'' This routine use will protect the interests of the people whose information is at risk by allowing us to take appropriate steps to facilitate a timely and effective response to a data breach. The routine use will also help us improve our ability to prevent, minimize, or remedy any harm that may result from a compromise of data covered by this system of records.

9. *To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:*

(a) To enable them to assure the safety of our employees and the public, the security of our workplace, and the operation of our facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

We will disclose RE information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of the public, employees, or workplaces, or that otherwise disrupt the operation of our facilities. We will disclose information to assist in prosecuting persons charged with violating a Federal, State, or local law in connection with such activities.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR Part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. The proposed routine uses will ensure that we efficiently perform our functions relating to the purpose and administration of the proposed *RECS* system of records. Our regulations provide that we will disclose information when a law specifically requires disclosure (Section 401.120). Federal law requires the disclosures that we make under routine use number seven. We will disclose information under routine use number seven to the extent another Federal law does not prohibit the disclosure; *e.g.,* the Internal Revenue Code generally prohibits the disclosure of tax return information which we receive to maintain individual earnings records. Therefore, all routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Record Storage Medium and Safeguards for the Information Covered by the Proposed *RECS* System of Records

We will maintain RE information covered by the proposed *RECS* system of records in electronic and paper form. We will keep paper records in locked

cabinets or in otherwise secure areas. We will safeguard the security of the electronic information covered by the proposed *RECS* system of records by requiring the use of access codes to enter the computer system that will house the data. We will permit only our authorized employees and contractors who require the information to perform their official duties to access the information covered by the proposed *RECS* system of records.

We provide appropriate security awareness and training annually to all our employees and contractors that include reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to, or disclosure of, such information.

IV. Effects of the Proposed *RECS* System of Records on the Rights of Individuals

We will maintain RE information that is relevant to our agency's program evaluation, research, and statistical reporting functions in the electronic system covered by the proposed *RECS* system of records. We will not use RE information to make a determination about entitlement to insurance coverage or benefits under the Social Security Act. We employ safeguards to protect the confidentiality of all personally identifiable information in our possession. We will adhere to the provisions of the Privacy Act and other applicable Federal statutes that govern our use and disclosure of the RE information that is covered by the proposed *RECS* system of records. We will disclose information under the routine uses discussed in this publication only as necessary to accomplish the stated purposes. Therefore, we do not anticipate that the proposed *RECS* system of records or routine use disclosures will have any unwarranted adverse effect on the privacy or other rights of persons who request an original or replacement SSN card from us.

Dated: August 18, 2009.

Michael J. Astrue,

Commissioner.

Social Security Administration; Notice of New System of Records; Required by the Privacy Act of 1974, as Amended

SYSTEM NUMBER: 60–0104

SYSTEM NAME:

Race and Ethnicity Collection System (RECS), Social Security Administration (SSA).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

SSA, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Successfully enumerated applicants for Social Security number (SSN) cards, other than those who receive cards through the enumeration-at-birth (EAB) or enumeration-at-entry programs (EAE), when such persons voluntarily provide race and ethnicity (RE) data.

CATEGORIES OF RECORDS IN THE SYSTEM:

SSN and RE data collected during contacts with the successfully enumerated applicants for SSN cards described above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 702, 704 and 1106 of the Social Security Act (42 U.S.C. 902, 904, and 1306), and SSA regulations at 20 CFR 401.165.

PURPOSE(S):

This system of records will cover RE data collected during contacts with persons who conduct enumeration business with us, other than those who receive cards through the EAB or EAE programs.

ROUTINE USES OF RECORDS COVERED BY THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use disclosures are as indicated below:

1. To the Office of the President in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

3. To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:

(a) SSA or any of our components;

(b) Any SSA employee in his or her official capacity;

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when we are authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when we determine that the litigation is likely to affect the operations of SSA or any of our components, is party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

4. To a Federal, State, or congressional support agency (*e.g.,* Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to:

(a) Releasing information to assess the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits or other programs under the Social Security Act;

(b) Examining the distribution of benefits under programs of the Social Security Act by economic and demographic groups and how these differences might be affected by possible changes in policy;

(c) Analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and,

(d) Analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test. We may make these disclosures if we:

(1) Determine that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(2) Determine that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies a person;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the person which such

limited additional exposure of the record might bring;

(iii) Has a reasonable probability of being accomplished;

(v) Is of importance to the programs under the Social Security Act and beneficiaries of such programs or is for an epidemiological research project that relates to programs under the Social Security Act or beneficiaries of such programs;

(3) Require the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by our employees, our agents, or by independent agents of the recipient agency of those safeguards;

(ii) Remove or destroy the information that enables the person to be identified at the earliest time that the recipient can do so consistent with the purpose of the project, unless the recipient receives written authorization from us that it is justified, based on research objectives, in retaining such information;

(iii) Make no further use of the records except:

(a) Under emergency circumstances affecting the health and safety of a person following written authorization from us;

(b) For disclosure to an identified person approved by us for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about a person;

(4) Secure a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

5. To our contractors and grantees performing program evaluation, research, and statistical activities directly relating to this system of records, and to contractors or grantees for another Federal or State agency performing such activities.

6. To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they are performing work for us as authorized by law, and they need access to information in our records in order to perform their assigned agency duties.

7. To the General Services Administration and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.

8. To the appropriate Federal, State, and local agencies, entities, and persons when (1) we suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or our other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

9. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to assure the safety of our employees and the public, the security of our workplace, and the operation of our facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We will store records in this system in electronic and paper form.

RETRIEVABILITY:

We will retrieve records by SSN.

ACCESSIBILITY:

Our researchers and statisticians prepare micro-data files about persons who are current, recently terminated, or potential recipients of benefits from Social Security and related programs for program evaluation, research, and statistical studies. When the product is in the form of micro-data, we make it available without personal identifiers to our other components and certain other agencies for data processing and data manipulation.

SAFEGUARDS:

We retain electronic and paper files with personal identifiers in secure storage areas accessible only to our authorized employees and contractors. We limit access to data with personal identifiers from this system to persons or organizations authorized by our Office of Research, Evaluation, and Statistics. We furnish specially edited micro-files on request to public and private organizations for purposes of research and analysis. We include further confidentiality protections in our data agreements.

We provide appropriate security awareness and training annually to all our employees and contractors that include reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to, or disclosure of, such information.

RETENTION AND DISPOSAL:

For purposes of records management disposition authority, we will follow the NARA and Department of Defense (DOD) 5015.2 regulations (DOD Design Criteria Standard for Electronic Records Management Software Applications). We will permanently maintain RE data covered by the RECS system of records. We will retain the research and statistical micro-data extract (stored on the mainframe) for a maximum of 100 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enumeration and Death Alerts, Office of Earnings, Enumeration, and Administrative Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager at the above address and providing their name, SSN, or other information that may be in this system of records that will identify them. Persons requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification, such as voter registration card, etc. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record

pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record to which notification is being requested. If we determine that the identifying information the person provides by telephone is insufficient, the person will be required to submit a request in writing or in person. If a person requests information by telephone on behalf of another individual, the subject person must be on the telephone with the requesting person and with us in the same phone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information such as mother's maiden name), and ask for his or her consent to provide information to the requesting person. Persons requesting notification submitted by mail must include a notarized statement to us to verify their identity or must certify in the request that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

We obtain information covered by this system of records from successfully enumerated applicants for original or replacement SSN cards (or from third parties acting on their behalf) who are not enumerated through the EAB or EAE programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–20286 Filed 8–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 8, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0183.

Date Filed: August 5, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 26, 2009.

Description: Application of Omni Air International, Inc. requesting a disclaimer of jurisdiction or, alternatively, for approval of the transfer of its certificate of public convenience and necessity.

Docket Number: DOT–OST–2009–0187.

Date Filed: August 7, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 2009.

Description: Application of Charter Air Transport Inc. requesting authority to operate scheduled passenger service as a commuter air carrier.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–20271 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2009–0001–N–20]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking re-approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 23, 2009.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0583.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Jackson at *nakia.jackson@dot.gov.* Please refer to the assigned OMB control number and the title of the information collection in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200

New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval of such activities by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the proposed information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: ARRA Solicitation of Applications and Notice of Funds Availability for High-Speed Rail Corridors and Intercity Passenger Rail Service—Capital Assistance and Planning Grants Program.

OMB Control Number: 2130–0583.

Abstract: On June 23, 2009, FRA published a Notice of Funds Availability (NOFA) and Interim Guidance for the High-Speed Rail (HSR)/Intercity Passenger Rail (IPR) Grant Program. *See* 74 FR 29900. The NOFA and Interim Guidance documents and additional information about the HSR/IPR Grant Program are available on FRA's public Web site at *http://www.fra.dot.gov/us/content/2243.* FRA plans on publishing a Final Guidance shortly in the **Federal Register**, and will also then place the Final Guidance on its Web site. The HSR/IPR Grant Program builds upon President Obama's ''Vision for High-Speed Rail in America,'' which was issued on April 16, 2009, and which describes a collaborative effort among the Federal Government, States, railroads and other key stakeholder to transform America's transportation system by investing in an efficient, high-speed passenger rail network of 100 to 600 mile intercity corridors.

The Interim/Final Guidance documents detail HSR/IPR Grant Program funding opportunities as well as specific application requirements and procedures. The evaluation and selection criteria are intended to prioritize projects that deliver transportation, economic recovery and other public benefits, including energy independence, environmental quality, and livable communities; ensure project success through effective program management, financial planning and stakeholder commitments; and emphasize a balanced approach to project types, locations, innovation, and timing. The program grant funds are being made available under the American Recovery and Reinvestment Act of 2009 (ARRA) and the Department of Transportation Appropriations Act of fiscal years 2008 and 2009. ARRA established the HSIPR Program—a new program that provides $8 billion to support the Administration's vision for developing high-speed rail in America.

Form Number(s): FRA F 6180.132; FRA F 6180.133; FRA F 6180.134; FRA F 6180.135; FRA F 6180.138; FRA F 6180.139.

Affected Public: States/Amtrak.

Respondent Universe: 50 States and Amtrak.

Frequency of Submission: On occasion.

REPORTING BURDEN:

RFEI notice	Respondent universe	Total annual responses (applications)	Average time per response (hours)	Total annual burden hours
—Track 1 Application Forms	States/Amtrak	75	100	7,500
—Track 2 Application Forms	States/Amtrak	20	200	4,000
—Track 3 Application Forms	States/Amtrak	20	50	1,000
—Track 4	States/Amtrak	20	50	1,000

Total Responses: 135.

Estimated Total Annual Burden: 13,500 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 18, 2009.

Kimberly Orben,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–20254 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

3rd Meeting: RTCA Special Committee 219/Attitude and Heading Reference System (AHRS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 219 meeting; Attitude and Heading Reference System (AHRS)

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 219: Attitude and Heading Reference System (AHRS).

DATES: The meeting will be held September 22–24, 2009 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 219: Attitude and Heading Reference System (AHRS) meeting. The agenda will include:

- Welcome/Introductions/ Administrative Remarks.
- Agenda overview.
- Review/Approve second meeting summary, RTCA Paper No. 034–09/ SC219–004, for the 3–5 February 2009 meeting.
- Review group document preparation options, and adopt a method if appropriate.
- Working Group (WG) reports.
  - WG–1—Performance & Testing Requirements.
  - WG–2—Environmental Requirements.
  - WG–3—Installation Requirements.
- New assignments.
- Working group sessions.
- Establish dates, location and agenda for next two meetings.
- Other business.
- Review minutes from the current meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 17, 2009.

Meredith Gibbs,

Staff Specialist, RTCA Advisory Committee.

[FR Doc. E9–20276 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

10th Meeting: RTCA Special Committee 216/Aeronautical Systems Security (Joint Meeting With EUROCAE WG–72)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 216 meeting; Aeronautical Systems Security (Joint meeting with EUROCAE WG–72).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 216: Aeronautical Systems Security (Joint meeting with EUROCAE WG–72).

DATES: The meeting will be held September 15–17, 2009. September 15th from 8:30 a.m. to 5 p.m., September 16–17, 2009 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 216/Aeronautical Systems Security (Joint meeting with EUROCAE WG–72) meeting. The agenda will include:

- SC–216 Specific Approval of the Summary of the 9th meeting held May 19–21, 2009, RTCA Paper No. 144–09/ SC216–019, and Action Item Reports (Brief).
- Welcome/Introductions/ Administrative Remarks.
- Agenda Overview.
- WG72 and SC216 Reports.
- Common Items/Issues Discussion.
- WG72/SC216 Subgroup Reports and Status Reviews.
- Subgroup Meetings/Break-outs.
  - WG72 part 3 with SC216 SG2.
  - WG72 parts 4/5 with SC216 SG3.
- Joint Meeting Continued.
- Establish Dates, Location, and Agenda for Next Meeting(s).
- Any Other Business.
- Subgroup Meetings/Break-outs (To 5 p.m. Thursday).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 17, 2009.

Meredith Gibbs,

Staff Specialist, RTCA Advisory Committee.

[FR Doc. E9–20275 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0148]

Notice of Receipt of Petition for Decision That Nonconforming 2003–2006 Mercedes Benz C-Class (W203 Chassis) Passenger Cars Manufactured Before September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006), and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 23, 2009.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

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

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

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

• *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How To Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page *http://www.regulations.gov.*

(2) On that page, click on ''Advanced Docket Search.''

(3) On the next page select ''NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'' from the drop-down menu in the Agency field and enter the Docket ID number shown at the heading of this document.

(4) After entering that information, click on ''submit.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS, LLC (''US SPECS''), of Havre de Grace, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether nonconforming 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006 are eligible for importation into the United States. The vehicles which U.S. SPECS believes are substantially similar are 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006 that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003–2006 Mercedes Benz C-Class (W203 chassis) passenger cars manufactured before September 1, 2006 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the dash in place of the international ECE warning symbol; (b) replacement of the speedometer with a unit reading in miles per hour, or modification of the existing speedometer so that it reads in miles per hour; and (c) installation of a U.S.-model cruise control lever.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of the following components on vehicles that are not already so equipped: (a) U.S.-model front sidemarker lamps; (b) U.S.-model headlamps; (c) U.S.-model tail lamps with integral rear side marker lamps; (d) U.S.-model high-mounted stop lamp; and (e) front and rear side-mounted reflex reflectors.

Standard no. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection*: installation of a supplemental key

warning buzzer, or installation or activation of U.S.-version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* installation or activation of U.S.-version software in the vehicle's computer system to meet the requirements of this standard on vehicles in which this software is not already installed or activated.

Standard No. 201 *Occupant Protection in Interior Impact:* replacement of non U.S.-model upper interior components with U.S.-model components to meet the requirements of this standard on vehicles that are not already so equipped.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of non U.S.-model door lock components with U.S.-model components on vehicles that are not already so equipped.

Standard No. 208 *Occupant Crash Protection*: inspection of all vehicles and replacement of any non U.S.-model seat belts, air bag control units, air bags, and sensors with U.S.-model components on vehicles that are not already so equipped; and (b) installation or activation of U.S.-version software to ensure that the seat belt warning system meets the requirements of this standard.

The petitioner states that the crash protection system used in these vehicles consists of dual front airbags and combination lap and shoulder belts at the front outboard seating positions as well as the rear seating positions. The seat belt systems are described as self-tensioning and capable of being released by means of a single red push-button.

Standard No. 209 *Seat Belt Assemblies:* inspection of all vehicles and replacement of any non U.S.-certified model seat belts with U.S.-model components.

Standard No. 225 *Child Restraint Anchorage Systems:* inspection of all vehicles and installation of non U.S.-model child restraint anchorage system components on vehicles not already so equipped.

Standard No. 301 *Fuel System Integrity:* inspection of all vehicles and replacement of any non U.S.-model fuel system components with U.S.-model components.

Standard No. 401 *Interior Trunk Release:* inspection of all vehicles and installation of U.S.-model components on vehicles not already so equipped.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 18, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–20262 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0079]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GAME BOAT.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0079 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 23, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0079. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel GAME BOAT is:

Intended Use: ''USCG Coastwise designation, charter sport fishing, tournament fishing.''

Geographic Region: ''State of Hawaii''.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: August 13, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–20268 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009–0078]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MY WAY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0078 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before September 23, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0078. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel MY WAY is:

Intended Use: ''As a 6-passenger sportfishing vessel.''

Geographic Region: ''Long Island, New York''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: August 13, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–20269 Filed 8–21–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 17, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 23, 2009 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0056.

Type of Review: Extension.

Title: ACH Vendor/Miscellaneous Payment Enrollment Form.

Description: Payment data will be collected from vendors doing business with the Federal Government. FMS/Treasury will use the information to electronically transmit payments to vendors' financial institutions.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 17,500 hours.

Clearance Officer: Wesley Powe, (202) 874–7662, Financial Management Service, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov.*

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–20287 Filed 8–21–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
August 24, 2009

Part II

Department of Health and Human Services

45 CFR Parts 160 and 164
Breach Notification for Unsecured Protected Health Information; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB56

Breach Notification for Unsecured Protected Health Information

AGENCY: Office for Civil Rights, Department of Health and Human Services.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Health and Human Services (HHS) is issuing this interim final rule with a request for comments to require notification of breaches of unsecured protected health information. Section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA) that was enacted on February 17, 2009, requires HHS to issue interim final regulations within 180 days to require covered entities under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and their business associates to provide notification in the case of breaches of unsecured protected health information. For purposes of determining what information is ''unsecured protected health information,'' in this document HHS is also issuing an update to its guidance specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

DATES: *Effective Date:* This interim final rule is effective September 23, 2009.

Comment Date: Comments on the provisions of this interim final rule are due on or before October 23, 2009. Comments on the information collection requirements associated with this rule are due on or before September 8, 2009.

ADDRESSES: You may submit comments, identified by RIN 0991–AB56, by any of the following methods (please do not submit duplicate comments):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* U.S. Department of Health and Human Services, Office for Civil Rights, Attention: HITECH Breach Notification, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Please submit one original and two copies.
- *Hand Delivery or Courier:* Office for Civil Rights, Attention: HITECH Breach Notification, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Please submit one original and two copies. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at *http://www.regulations.gov.* Because comments will be made public, they should not include any sensitive personal information, such as a person's social security number; date of birth; driver's license number, state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or U.S. Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue, SW., Washington, DC 20201 (call ahead to the contact listed below to arrange for inspection).

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5), was enacted on February 17, 2009. Subtitle D of Division A of the HITECH Act (the Act), entitled ''Privacy,'' among other provisions, requires the Department of Health and Human Services (HHS or the Department) to issue interim final regulations for breach notification by covered entities subject to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191) and their business associates.

These breach notification provisions are found in section 13402 of the Act and apply to HIPAA covered entities and their business associates that access, maintain, retain, modify, record, store, destroy, or otherwise hold, use, or disclose unsecured protected health information. The Act incorporates the definitions of ''covered entity,'' ''business associate,'' and ''protected health information'' used in the HIPAA Administrative Simplification regulations (45 CFR parts 160, 162, and 164) (HIPAA Rules) at § 160.103. Under the HIPAA Rules, a covered entity is a health plan, health care clearinghouse, or health care provider that transmits any health information electronically in connection with a covered transaction, such as submitting health care claims to a health plan. Business associate, as defined in the HIPAA Rules, means a person who performs functions or activities on behalf of, or certain services for, a covered entity that involve the use or disclosure of individually identifiable health information. Examples of business associates include third party administrators or pharmacy benefit managers for health plans, claims processing or billing companies, transcription companies, and persons who perform legal, actuarial, accounting, management, or administrative services for covered entities and who require access to protected health information. The HIPAA Rules define ''protected health information'' as the individually identifiable health information held or transmitted in any form or medium by these HIPAA covered entities and business associates, subject to certain limited exceptions.

The Act requires HIPAA covered entities to provide notification to affected individuals and to the Secretary of HHS following the discovery of a breach of unsecured protected health information. In addition, in some cases, the Act requires covered entities to provide notification to the media of breaches. In the case of a breach of unsecured protected health information at or by a business associate of a covered entity, the Act requires the business associate to notify the covered entity of the breach. Finally, the Act requires the Secretary to post on an HHS Web site a list of covered entities that experience breaches of unsecured protected health information involving more than 500 individuals.

Section 13400(1) of the Act defines ''breach'' to mean, generally, the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information. The Act provides exceptions to this definition to encompass disclosures where the recipient of the information would not reasonably have been able to retain the information, certain unintentional acquisition, access, or use of information by employees or persons acting under the authority of a covered entity or business associate, as well as certain inadvertent disclosures among persons similarly authorized to access protected health information at a business associate or covered entity.

Further, section 13402(h) of the Act defines ''unsecured protected health information'' as ''protected health information that is not secured through the use of a technology or methodology specified by the Secretary in guidance'' and provides that the guidance specify the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals. Covered entities and business associates that implement the specified technologies and methodologies with respect to protected health information are not required to provide notifications in the event of a breach of such information—that is, the information is not considered ''unsecured'' in such cases. As required by the Act, the Secretary initially issued this guidance on April 17, 2009 (it was subsequently published in the **Federal Register** at 74 FR 19006 on April 27, 2009). The guidance listed and described encryption and destruction as the two technologies and methodologies for rendering protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

In cases in which notification is required, the Act at section 13402 prescribes the timeliness, content, and methods of providing the breach notifications. We discuss these and the above statutory provisions in more detail below where we describe section-by-section how these new regulations implement the breach notification provisions at section 13402 of the Act.

In addition to the breach notification provisions for HIPAA covered entities and business associates at section 13402, section 13407 of the Act, which is to be implemented and enforced by the Federal Trade Commission (FTC), imposes similar breach notification requirements upon vendors of personal health records (PHRs) and their third party service providers following the discovery of a breach of security of unsecured PHR identifiable health information.[1] As with the definition of ''unsecured protected health information,'' the provisions at section 13407(f)(3) define ''unsecured PHR identifiable health information'' as PHR identifiable health information that is not protected through the use of a technology or methodology specified by the Secretary of HHS in guidance. Thus, entities subject to the FTC breach notification rules must also use the Secretary's guidance to determine whether the information subject to a breach was ''unsecured'' and, therefore, whether breach notification is required.

When HHS issued the guidance, HHS also published in the same document a request for information (RFI), inviting public comment both on the guidance itself, as well as on the breach provisions of section 13402 of the Act generally. After considering the public comment, we are issuing an updated version of the guidance in Section II below. In addition, we discuss public comment received on the Act's breach notification provisions where relevant below in the section-by-section description of the interim final rule.

We have concluded that we have good cause, under 5 U.S.C. 553(b)(B), to waive the notice-and-comment requirements of the Administrative Procedure Act and to proceed with this interim final rule. Section 13402(j) explicitly required us to issue these regulations as ''interim final regulations'' and to do so within 180 days. Based on this statutory directive and limited time frame, we concluded that notice-and-comment rulemaking was impracticable and contrary to public policy. Nevertheless, we sought comments in the RFI referenced above and considered those comments when drafting this rule. In addition, we provide the public with a 60-day period following publication of this document to submit comments on the interim final rule.

II. Guidance Specifying the Technologies and Methodologies That Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals

A. Background

As discussed above, section 13402 of the Act requires breach notification following the discovery of a breach of unsecured protected health information. Section 13402(h) of the Act defines ''unsecured protected health information'' as ''protected health information that is not secured through the use of a technology or methodology specified by the Secretary in guidance'' and requires the Secretary to specify in the guidance the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals. As required by the Act, this guidance was issued on April 17, 2009, and later published in the **Federal Register** on April 27, 2009 (74 FR 19006). The guidance specified encryption and destruction as the technologies and methodologies for rendering protected health information, as well as PHR identifiable health information under section 13407 of the Act and the FTC's implementing regulation, unusable, unreadable, or indecipherable to unauthorized individuals such that breach notification is not required. The RFI asked for general comment on this guidance as well as for specific comment on the technologies and methodologies to render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

Many commenters expressed concern and confusion regarding the purpose of the guidance and its impact on a covered entity's responsibilities under the HIPAA Security Rule (45 CFR part 164, subparts A and C). We emphasize that this guidance does nothing to modify a covered entity's responsibilities with respect to the Security Rule nor does it impose any new requirements upon covered entities to encrypt all protected health information. The Security Rule requires covered entities to safeguard electronic protected health information and permits covered entities to use any security measures that allow them to reasonably and appropriately implement all safeguard requirements. Under 45 CFR 164.312(a)(2)(iv) and (e)(2)(ii), a covered entity must consider implementing encryption as a method for safeguarding electronic protected health information; however, because these are addressable implementation specifications, a covered entity may be in compliance with the Security Rule even if it reasonably decides not to encrypt electronic protected health information and instead uses a comparable method to safeguard the information.

Therefore, if a covered entity chooses to encrypt protected health information to comply with the Security Rule, does so pursuant to this guidance, and subsequently discovers a breach of that

[1] The FTC issued a notice of proposed rulemaking to implement section 13407 of the Act on April 20, 2009 (74 FR 17914).

encrypted information, the covered entity will not be required to provide breach notification because the information is not considered ''unsecured protected health information'' as it has been rendered unusable, unreadable, or indecipherable to unauthorized individuals. On the other hand, if a covered entity has decided to use a method other than encryption or an encryption algorithm that is not specified in this guidance to safeguard protected health information, then although that covered entity may be in compliance with the Security Rule, following a breach of this information, the covered entity would have to provide breach notification to affected individuals. For example, a covered entity that has a large database of protected health information may choose, based on their risk assessment under the Security Rule, to rely on firewalls and other access controls to make the information inaccessible, as opposed to encrypting the information. While the Security Rule permits the use of firewalls and access controls as reasonable and appropriate safeguards, a covered entity that seeks to ensure breach notification is not required in the event of a breach of the information in the database would need to encrypt the information pursuant to the guidance.

We also received several comments asking for clarification and additional detail regarding the forms of information and the specific devices and protocols described in the guidance. As a result, we provide clarification regarding the forms of information addressed in the National Institute of Standards and Technology (NIST) publications referenced in the guidance. We clarify that ''data in motion'' includes data that is moving through a network, including wireless transmission, whether by e-mail or structured electronic interchange, while ''data at rest'' includes data that resides in databases, file systems, flash drives, memory, and any other structured storage method. ''Data in use'' includes data in the process of being created, retrieved, updated, or deleted, and ''data disposed'' includes discarded paper records or recycled electronic media.

Additionally, many commenters suggested that access controls be included in the guidance as a method for rendering protected health information unusable, unreadable, or indecipherable to unauthorized individuals. We recognize that access controls, as well as other security methods such as firewalls, are important tools for safeguarding protected health information. While we believe access controls may render information inaccessible to unauthorized individuals, we do not believe that access controls meet the statutory standard of rendering protected health information unusable, unreadable, or indecipherable to unauthorized individuals. If access controls are compromised, the underlying information may still be usable, readable, or decipherable to an unauthorized individual, and thus, constitute unsecured protected health information for which breach notification is required. Therefore, we have not included access controls in the guidance; however, we do emphasize the benefit of strong access controls, which may function to prevent breaches of unsecured protected health information from occurring in the first place.

Other commenters suggested that the guidance include redaction of paper records as an alternative to destruction. Because redaction is not a standardized methodology with proven capabilities to destroy or render the underlying information unusable, unreadable or indecipherable, we do not believe that redaction is an accepted alternative method to secure paper-based protected health information. Therefore, we have clarified in this guidance that only destruction of paper protected health information, and not redaction, will satisfy the requirements to relieve a covered entity or business associate from breach notification. We note, however, that covered entities and business associates may continue to create limited data sets or de-identify protected health information through redaction if the removal of identifiers results in the information satisfying the criteria of 45 CFR 164.514(e)(2) or 164.514(b), respectively. Further, a loss or theft of information that has been redacted appropriately may not require notification under these rules either because the information is not protected health information (as in the case of de-identified information) or because the unredacted information does not compromise the security or privacy of the information and thus, does not constitute a breach as described in Section IV below.

In response to comments received, we also make two additional clarifications in the guidance. First, for purposes of the guidance below and ensuring encryption keys are not breached, we clarify that covered entities and business associates should keep encryption keys on a separate device from the data that they encrypt or decrypt. Second, we also include in the guidance below a note regarding roadmap guidance activities on the part of the NIST pertaining to data storage on enterprise-level storage devices, such as RAID (redundant array of inexpensive disks), or SAN (storage-attached network) systems.

For ease of reference, we have published this updated guidance in this document below; however, it will also be available on the HHS Web site at *http://www.hhs.gov/ocr/privacy/*. Any further comments regarding this guidance received in response to the interim final rule will be addressed in the first annual update to the guidance, to be issued in April 2010.

B. Guidance Specifying the Technologies and Methodologies that Render Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals

Protected health information (PHI) is rendered unusable, unreadable, or indecipherable to unauthorized individuals if one or more of the following applies:

(a) Electronic PHI has been encrypted as specified in the HIPAA Security Rule by ''the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key'' [2] and such confidential process or key that might enable decryption has not been breached. To avoid a breach of the confidential process or key, these decryption tools should be stored on a device or at a location separate from the data they are used to encrypt or decrypt. The encryption processes identified below have been tested by the National Institute of Standards and Technology (NIST) and judged to meet this standard.

(i) Valid encryption processes for data at rest are consistent with NIST Special Publication 800–111, *Guide to Storage Encryption Technologies for End User Devices.*[3] [4]

(ii) Valid encryption processes for data in motion are those which comply, as appropriate, with NIST Special Publications 800–52, *Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations;* 800–77, *Guide to IPsec VPNs;* or *800–113, Guide to SSL VPNs,* or others which are Federal Information Processing Standards (FIPS) 140–2 validated.[5]

[2] 45 CFR 164.304, definition of ''encryption.''

[3] NIST Roadmap plans include the development of security guidelines for enterprise-level storage devices, and such guidelines will be considered in updates to this guidance, when available.

[4] Available at *http://www.csrc.nist.gov/.*

[5] Available at *http://www.csrc.nist.gov/.*

(b) The media on which the PHI is stored or recorded have been destroyed in one of the following ways:

(i) Paper, film, or other hard copy media have been shredded or destroyed such that the PHI cannot be read or otherwise cannot be reconstructed. Redaction is specifically excluded as a means of data destruction.

(ii) Electronic media have been cleared, purged, or destroyed consistent with NIST Special Publication 800–88, *Guidelines for Media Sanitization,*[6] such that the PHI cannot be retrieved.

III. Overview of Interim Final Rule

We are adding a new subpart D to part 164 of title 45 of the Code of Federal Regulations (CFR) to implement the breach notification provisions in section 13402 of the Act. These provisions apply to HIPAA covered entities and their business associates and set forth the requirements for notification to affected individuals, the media, and the Secretary of HHS following a breach of unsecured protected health information. In drafting this interim final regulation, we considered the public comments received in response to the RFI described above.

In addition, we consulted closely with the FTC in the development of these regulations. Commenters in response to both the RFI as well as the FTC's notice of proposed rulemaking urged HHS and the FTC to work together to ensure that the regulated entities know with which rule they must comply and that those entities that are subject to both rules because they may operate in different roles are not subject to two completely different and inconsistent regulatory schemes. In addition, commenters were concerned that individuals could receive multiple notices of the same breach if the HHS and the FTC regulations overlapped. Thus, HHS coordinated with the FTC to ensure these issues were addressed in the respective rulemakings. First, the rules make clear that entities operating as HIPAA covered entities and business associates are subject to HHS', and not the FTC's, breach notification rule. Second, in those limited cases where an entity may be subject to both HHS' and the FTC's rules, such as a vendor that offers PHRs to customers of a HIPAA covered entity as a business associate and also offers PHRs directly to the public, we worked with the FTC to ensure both sets of regulations were harmonized by including the same or similar requirements, within the constraints of the statutory language. See *Section IV.F.* below for a more detailed discussion and an example of our harmonization efforts.

IV. Section-by-Section Description of Interim Final Rule

The following discussion describes the provisions of the interim final rule section by section. Those interested in commenting on the interim final rule can assist the Department by preceding discussion of any particular provision or topic with a citation to the section of the interim final rule being discussed.

A. Applicability—Section 164.400

Section 164.400 of the interim final rule provides that this breach notification rule is applicable to breaches occurring on or after 30 days from the date of publication of this interim final rule. See *Section IV.K. Effective/Compliance Date* of this rule for further discussion.

B. Definitions—Section 164.402

Section 164.402 of the interim final rule adopts definitions for the terms ''breach'' and ''unsecured protected health information.''

1. Breach

Section 13402 of the Act and this interim final rule require covered entities and business associates to provide notification following a breach of unsecured protected health information. Section 13400(1)(A) of the Act defines ''breach'' as the ''unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of the protected health information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.'' Section 13400(1)(B) of the Act provides several exceptions to the definition of ''breach.'' Based on section 13400(1)(A), we have defined ''breach'' at § 164.402 of the interim final rule as ''the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of this part which compromises the security or privacy of the protected health information.'' We have added paragraph (1) to the definition to clarify when the security or privacy of information is considered to be compromised. Paragraph (2) of the definition then includes the statutory exceptions, including the exception within section 13400(1)(A) that refers to whether the recipient would reasonably have been able to retain the information.

Protected Health Information

We note that the definition of ''breach'' is limited to protected health information. With respect to a covered entity or business associate of a covered entity, protected health information is individually identifiable health information that is transmitted or maintained in any form or medium, including electronic information. 45 CFR 160.103. If information is de-identified in accordance with 45 CFR 164.514(b), it is not protected health information, and thus, any inadvertent or unauthorized use or disclosure of such information will not be considered a breach for purposes of this subpart. Additionally, § 160.103 excludes certain types of individually identifiable health information from the definition of ''protected health information,'' such as employment records held by a covered entity in its role as employer. If individually identifiable health information that is not protected health information is used or disclosed in an unauthorized manner, it would not qualify as a breach for purposes of this subpart—although the covered entity should consider whether it has notification requirements under other laws. Further, we note that although the definition of ''breach'' applies to protected health information generally, covered entities and business associates are required to provide the breach notifications required by the Act and this interim final rule (discussed below) only upon a breach of unsecured protected health information. See also Section II of this document for a list of the technologies and methodologies that render protected health information secure such that notification is not required in the event of a breach.

Unauthorized Acquisition, Access, Use, or Disclosure

The statute defines a ''breach'' as the ''unauthorized'' acquisition, access, use, or disclosure of protected health information. Several commenters asked that we define ''unauthorized'' or that we clarify its meaning. We clarify that ''unauthorized'' is an impermissible use or disclosure of protected health information under the HIPAA Privacy Rule (subpart E of 45 CFR part 164). Accordingly, the definition of ''breach'' at § 160.402 of the interim final rule interprets the ''unauthorized acquisition, access, use, or disclosure of protected health information'' as ''the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of this part.'' We emphasize that not all violations of the Privacy Rule will be

[6] Available at *http://www.csrc.nist.gov/.*

breaches under this subpart, and therefore, covered entities and business associates need not provide breach notification in all cases of impermissible uses and disclosures. We also note that the HIPAA Security Rule provides for administrative, physical, and technical safeguards and organizational requirements for electronic protected health information, but does not govern uses and disclosures of protected health information. Accordingly, a violation of the Security Rule does not itself constitute a potential breach under this subpart, although such a violation may lead to a use or disclosure of protected health information that is not permitted under the Privacy Rule and thus, may potentially be a breach under this subpart.

The Act does not define the terms ''acquisition'' and ''access.'' Several commenters asked that we define or identify the differences between acquisition, access, use, and disclosure of protected health information, for purposes of the definition of ''breach.'' We interpret ''acquisition'' and ''access'' to information based on their plain meanings and believe that both terms are encompassed within the current definitions of ''use'' and ''disclosure'' in the HIPAA Rules. Accordingly, we have not added separate definitions for these terms. We have retained the statutory terms in the regulation in order to maintain consistency with the statute. In addition, we note that while the HIPAA Security Rule at § 164.304 includes a definition of the term ''access,'' such definition is limited to the ability to use ''system resources'' and not to access to information more generally and thus, we have revised that definition to make clear that it does not apply for purposes of these breach notification rules.

For an acquisition, access, use, or disclosure of protected health information to constitute a breach, it must constitute a violation of the Privacy Rule. Therefore, one of the first steps in determining whether notification is necessary under this subpart is to determine whether a use or disclosure violates the Privacy Rule. We note that uses or disclosures that impermissibly involve more than the minimum necessary information, in violation of §§ 164.502(b) and 164.514(d), may qualify as breaches under this subpart. In contrast, a use or disclosure of protected health information that is incident to an otherwise permissible use or disclosure and occurs despite reasonable safeguards and proper minimum necessary procedures would not be a violation of the Privacy Rule pursuant to 45 CFR 164.502(a)(1)(iii) and, therefore, would not qualify as a potential breach. Finally, violations of administrative requirements, such as a lack of reasonable safeguards or a lack of training, do not themselves qualify as potential breaches under this subpart (although such violations certainly may lead to impermissible uses or disclosures that qualify as breaches).

Compromises the Security or Privacy of Protected Health Information

The Act and regulation next limit the definition of ''breach'' to a use or disclosure that ''compromises the security or privacy'' of the protected health information. Accordingly, once it is established that a use or disclosure violates the Privacy Rule, the covered entity must determine whether the violation compromises the security or privacy of the protected health information.

For the purposes of the definition of ''breach,'' many commenters suggested that we add a harm threshold such that an unauthorized use or disclosure of protected health information is considered a breach only if the use or disclosure poses some harm to the individual. These commenters noted that the ''compromises the security or privacy'' language in section 13400(1)(A) of the Act contemplates that covered entities will perform some type of risk assessment to determine if there is a risk of harm to the individual, and therefore, if a breach has occurred. Commenters urged that the addition of a harm threshold to the definition would also align this regulation with many State breach notification laws that require entities to reach similar harm thresholds before providing notification. Finally, some commenters noted that failure to include a harm threshold for requiring breach notification may diminish the impact of notifications received by individuals, as individuals may be flooded with notifications for breaches that pose no threat to the security or privacy of their protected health information or, alternatively, may cause unwarranted panic in individuals, and the expenditure of undue costs and other resources by individuals in remedial action.

We agree that the statutory language encompasses a harm threshold and have clarified in paragraph (1) of the definition that ''compromises the security or privacy of the protected health information'' means ''poses a significant risk of financial, reputational, or other harm to the individual.'' This ensures better consistency and alignment with State breach notification laws, as well as existing obligations on Federal agencies (some of which also must comply with these rules as HIPAA covered entities) pursuant to OMB Memorandum M–07–16 to have in place breach notification policies for personally identifiable information that take into account the likely risk of harm caused by a breach in determining whether breach notification is required. Thus, to determine if an impermissible use or disclosure of protected health information constitutes a breach, covered entities and business associates will need to perform a risk assessment to determine if there is a significant risk of harm to the individual as a result of the impermissible use or disclosure. In performing the risk assessment, covered entities and business associates may need to consider a number or combination of factors, some of which are described below.[7]

Covered entities and business associates should consider who impermissibly used or to whom the information was impermissibly disclosed when evaluating the risk of harm to individuals. If, for example, protected health information is impermissibly disclosed to another entity governed by the HIPAA Privacy and Security Rules or to a Federal agency that is obligated to comply with the Privacy Act of 1974 (5 U.S.C. 552a) and the Federal Information Security Management Act of 2002 (44 U.S.C. 3541 *et seq.*), there may be less risk of harm to the individual, since the recipient entity is obligated to protect the privacy and security of the information it received in the same or similar manner as the entity that disclosed the information. In contrast, if protected health information is impermissibly disclosed to any entity or person that does not have similar obligations to maintain the privacy and security of the information, the risk of harm to the individual is much greater.

We expect that there may be circumstances where a covered entity takes immediate steps to mitigate an impermissible use or disclosure, such as by obtaining the recipient's satisfactory assurances that the information will not be further used or disclosed (through a confidentiality agreement or similar means) or will be destroyed. If such steps eliminate or reduce the risk of harm to the individual to a less than ''significant risk,'' then we interpret that the security and privacy of the

[7] Covered entities may also wish to review OMB Memorandum M–07–16 for examples of the types of factors that may need to be taken into account in determining whether an impermissible use or disclosure presents a significant risk of harm to the individual.

information has not been compromised and, therefore, no breach has occurred.

In addition, there may be circumstances where impermissibly disclosed protected health information is returned prior to it being accessed for an improper purpose. For example, if a laptop is lost or stolen and then recovered, and a forensic analysis of the computer shows that its information was not opened, altered, transferred, or otherwise compromised, such a breach may not pose a significant risk of harm to the individuals whose information was on the laptop. Note, however, that if a computer is lost or stolen, we do not consider it reasonable to delay breach notification based on the hope that the computer will be recovered.

In performing a risk assessment, covered entities and business associates should also consider the type and amount of protected health information involved in the impermissible use or disclosure. If the nature of the protected health information does not pose a significant risk of financial, reputational, or other harm, then the violation is not a breach. For example, if a covered entity improperly discloses protected health information that merely included the name of an individual and the fact that he received services from a hospital, then this would constitute a violation of the Privacy Rule, but it may not constitute a significant risk of financial or reputational harm to the individual. In contrast, if the information indicates the type of services that the individual received (such as oncology services), that the individual received services from a specialized facility (such as a substance abuse treatment program [8]), or if the protected health information includes information that increases the risk of identity theft (such as a social security number, account number, or mother's maiden name), then there is a higher likelihood that the impermissible use or disclosure compromised the security and privacy of the information. The risk assessment should be fact specific, and the covered entity or business associate should keep in mind that many forms of health information, not just information about sexually transmitted diseases or mental health, should be considered sensitive for purposes of the risk of reputational harm—especially in light of fears about employment discrimination.

We also address impermissible uses and disclosures involving limited data sets (as the term is used at 45 CFR 164.514(e) of the Privacy Rule), in paragraph (1) of the definition of ''breach'' at § 164.402 of the interim final rule. In the RFI discussed above, we asked for public comment on whether limited data sets should be considered unusable, unreadable, or indecipherable and included as a methodology in the guidance. A limited data set is created by removing the 16 direct identifiers listed in § 164.514(e)(2) from the protected health information.[9] These direct identifiers include the name, address, social security number, and account number of an individual or the individual's relative, employer, or household member. When these 16 direct identifiers are removed from the protected health information, the information is not completely de-identified pursuant to 45 CFR 164.514(b). In particular, the elements of dates, such as dates of birth, and zip codes, are allowed to remain within the limited data set, which increase the potential for re-identification of the information. Because there is a risk of re-identification of the information within a limited data set, the Privacy Rule treats this information as protected health information that may only be used or disclosed as permitted by the Privacy Rule.

Several commenters suggested that the limited data set should not be included in the guidance as a method to render protected health information unusable, unreadable, or indecipherable to unauthorized individuals such that breach notification is not required. These commenters cited concerns about the risk of re-identification of protected health information in a limited data set and noted that, as more data exists in electronic form and as more data becomes public, it will be easier to combine these various sources to re-establish the identity of the individual. Furthermore, due to the risk of re-identification, these commenters stated that creating a limited data set was not comparable to encrypting information, and therefore, should not be included as a method to render protected health information unusable, unreadable, or indecipherable to unauthorized individuals.

The majority of commenters, however, did support the inclusion of the limited data set in the guidance. These commenters stated that it would be impractical to require covered entities and business associates to notify individuals of a breach of information within a limited data set because, by definition, such information excludes the very identifiers that would enable covered entities and business associates, without undue burden, to identify the affected individuals and comply with the breach notification requirements. Additionally, these commenters cited contractual concerns regarding the data use agreement, which prohibits the recipient of a limited data set from re-identifying the information and therefore, may pose problems with complying with the notification requirements of section 13402(b) of the Act.

These commenters also noted that the decision to exclude the limited data set from the guidance, such that a breach of a limited data set would require breach notification, would reduce the likelihood that covered entities would continue to create and share limited data sets. This, in turn, would have a chilling effect on the research and public health communities, which rely on receiving information from covered entities in limited data set form.

Finally, commenters noted that the removal of the 16 direct identifiers in the limited data set presents a minimal risk of serious harm to the individual by limiting the possibility that the information could be used for an illicit purpose if breached. These commenters also suggested that the inclusion of the limited data set in the guidance would align with most state breach notification laws, which, as a general matter, only require notification when certain identifiers are exposed and when there is a likelihood that the breach will result in harm to the individual.

We also asked commenters if they believed that the removal of an individual's date of birth or zip code, in addition to the 16 direct identifiers in 45 CFR 164.514(e)(2), would reduce the risk of re-identification of the information such that it could be included in the guidance. Several commenters responded to this question. While some stated that the removal of these data elements would render the

[8] Note that an impermissible disclosure that indicates that an individual has received services from a substance abuse treatment program may also constitute a violation of 42 U.S.C. 290dd–2 and the implementing regulations at 42 CFR part 2. These provisions require the confidentiality of substance abuse patient records.

[9] A limited data set is protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual: (1) Names; (2) postal address information, other than town or city, State, and zip code; (3) telephone numbers; (4) fax numbers; (5) e-mail addresses; (6) social security numbers; (7) medical record numbers; (8) health plan beneficiary numbers; (9) account numbers; (10) certificate/license plate numbers; (11) vehicle identifiers and serial numbers; (12) device identifiers and serial numbers; (13) Web URLs; (14) Internet Protocol (IP) address numbers; (15) biometric identifiers, including finger and voice prints; and (16) full face photographic images and any comparable images.

information useless to the research and public health communities, which may, for example, require zip codes for many population based studies, many commenters did acknowledge that the removal of these additional identifiers would reduce the risk of re-identification of the information.

After considering these comments, we decided against including the limited data set in the guidance as a method for rendering protected health information unusable, unreadable, or indecipherable to unauthorized individuals due to the potential risk of re-identification of this information. However, we address breaches of limited data sets in the definition of ''breach'' as follows.

Under the definition of ''breach'' at § 164.402, in order to determine whether a covered entity's or business associate's impermissible use or disclosure of protected health information constitutes a breach, the covered entity or business associate will need to perform the risk assessment discussed above. This applies to impermissible uses or disclosures of protected health information that constitute a limited data set, unless, as discussed below, the protected health information also does not include zip codes or dates of birth. In performing the risk assessment to determine the likely risk of harm caused by an impermissible use or disclosure of a limited data set, the covered entity or business associate should take into consideration the risk of re-identification of the protected health information contained in the limited data set.

Through a risk assessment, a covered entity or business associate may determine that the risk of identifying a particular individual is so small that the use or disclosure poses no significant risk of harm to any individuals. For example, it may be determined that an impermissible use or disclosures of a limited data set that includes zip codes, based on the population features of those zip codes, does not create a significant risk that a particular individual can be identified. Therefore, there would be no significant risk of harm to the individual. If there is no significant risk of harm to the individual, then no breach has occurred and no notification is required. If, however, the covered entity or business associate determines that the individual can be identified based on the information disclosed, and there is otherwise a significant risk of harm to the individual, then breach notification is required, unless one of the other exceptions discussed below applies.

We have provided a narrow, explicit exception to what compromises the privacy or security of protected health information for a use or disclosure of protected health information that excludes the 16 direct identifiers listed at 45 CFR 164.514(e)(2) as well as dates of birth and zip codes. Thus, we deem an impermissible use or disclosure of this information to not compromise the security or privacy of the protected health information, because we believe that impermissible uses or disclosures of this information—if subjected to the type of risk assessment described above—would pose a low level of risk. We emphasize that this is a narrow exception. If, for example, the information does not contain birth dates but does contain zip code information or contains both birth dates and zip code information, then this narrow exception would not apply, and the covered entity or business associate would be required to perform a risk assessment to determine if the risk of re-identification poses a significant risk of harm to the individual. We invite comments on this narrow exception. We do not believe that this narrow exception will have the unintended consequence of discouraging the use of encryption and other methods for rendering protected health information unusable, unreadable, or indecipherable; however, we invite comments on this issue as well. Finally, we note that this narrow exception should not be construed as encouraging or permitting the use or disclosure of more than the minimum necessary information, in violation of §§ 164.502(b) and 164.514(d).

We do not intend to interfere with research or public health activities that rely on dates of birth or zip codes. Uses and disclosures of limited data sets that include this information continue to be permissible under the Privacy Rule if the applicable requirements, such as a data use agreement, are satisfied. Further, we note that a covered entity or business associate is not responsible for a breach by a third party to whom it permissibly disclosed protected health information, including limited data sets, unless the third party received the information in its role as an agent of the covered entity or business associate. To the extent that a third party recipient of the information is itself a covered entity, and the information is breached while at the third party (i.e., used or disclosed in an impermissible manner and in a manner determined to compromise the privacy or security of the information), then the third party will be responsible for complying with the provisions of this interim final rule. In cases where a covered entity is the recipient of a limited data set pursuant to § 164.514(e) of the Privacy Rule and it is unable to re-identify the individuals after a breach occurs, it may satisfy the requirements of § 164.404 without re-identifying the information, by providing substitute notice to the individuals as required by paragraph (d)(2) of that section.

We note that the discussion above regarding ''limited data sets'' applies to any protected health information that excludes the 16 direct identifiers listed at § 164.514(e)(2), regardless of whether the information is used for health care operations, public health, or research purposes (see § 164.514(e)(3)(i)), and is subject to a data use agreement under § 164.514(e) of the Privacy Rule. Thus, for example, a covered entity that impermissibly uses or discloses data that is stripped of the 16 direct identifiers described above, zip codes, and dates of birth, may take advantage of the exception to what is a breach, regardless of the intended purpose of the use or disclosure or whether a data use agreement was in place.

With respect to any type of protected health information, we note that § 164.414, discussed below, gives covered entities and business associates the burden of demonstrating that no breach has occurred because the impermissible use or disclosure did not pose a significant risk of harm to the individual. Covered entities and business associates must document their risk assessments, so that they can demonstrate, if necessary, that no breach notification was required following an impermissible use or disclosure of protected health information. For impermissible uses or disclosures of protected health information that fall under the narrow exception at paragraph (1)(ii) of this definition, which do not qualify as breaches because the protected health information is a limited data set that does not include zip codes or dates of birth, documentation that demonstrates that the lost information did not include these identifiers will suffice.

Exceptions to Breach

Section 13400(1) of the Act also includes three exceptions to the definition of ''breach'' that encompass situations Congress clearly intended to not constitute breaches: (1) Unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or business associate (section 13400(1)(B)(i)); (2) inadvertent disclosure of protected health information from one person

authorized to access protected health information at a covered entity or business associate to another person authorized to access protected health information at the covered entity or business associate (section 13400(1)(B)(ii) and (iii)); and (3) unauthorized disclosures in which an unauthorized person to whom protected health information is disclosed would not reasonably have been able to retain the information (section 13400(1)(A)). We have included these three exceptions as paragraphs (2)(i), (ii), and (iii), respectively.

The first regulatory exception at paragraph (2)(i) of this definition, for unintentional acquisition, access, or use of protected health information, generally mirrors the exception in section 13400(1)(B)(i) of the Act. This statutory section excepts from the definition of ''breach'' the unintentional acquisition, access, or use of protected health information by an employee or individual acting under the authority of a covered entity or a business associate, if the acquisition, access, or use was made in good faith, within the course and scope of employment or other professional relationship, and does not result in further use or disclosure.

We modified the statutory language to use ''workforce members'' instead of employees. Workforce member is a defined term in 45 CFR 160.103 and means ''employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity, is under the direct control of such entity, whether or not they are paid by the covered entity.''

A person is acting under the authority of a covered entity or business associate if he or she is acting on its behalf. This may include a workforce member of a covered entity, an employee of a business associate, or even a business associate of a covered entity. Similarly, to determine whether the access, acquisition, or use was made ''within the scope of authority,'' the covered entity or business associate should consider whether the person was acting on its behalf at the time of the inadvertent acquisition, access, or use.

Additionally, while the statutory language provides that this exception applies where the recipient does not further use or disclose the information, we have interpreted this exception as encompassing circumstances where the recipient does not further use or disclose the information in a manner not permitted under the Privacy Rule. In circumstances where any further use or disclosure of the information is permissible under the Privacy Rule, we interpret that there is no breach because the security and privacy of the information has not been compromised by any such permissible use or disclosure.

To illustrate this exception, we offer the following example. A billing employee receives and opens an e-mail containing protected health information about a patient which a nurse mistakenly sent to the billing employee. The billing employee notices that he is not the intended recipient, alerts the nurse of the misdirected e-mail, and then deletes it. The billing employee unintentionally accessed protected health information to which he was not authorized to have access. However, the billing employee's use of the information was done in good faith and within the scope of authority, and therefore, would not constitute a breach and notification would not be required, provided the employee did not further use or disclose the information accessed in a manner not permitted by the Privacy Rule.

In contrast, a receptionist at a covered entity who is not authorized to access protected health information decides to look through patient files in order to learn of a friend's treatment. In this case, the impermissible access to protected health information would not fall within this exception to breach because such access was neither unintentional, done in good faith, nor within the scope of authority.

The second regulatory exception, at paragraph (2)(ii) of this definition, covers inadvertent disclosures and generally mirrors the exception provided in section 13400(1)(B)(ii) and (iii) of the Act, with slight modifications. The statute excepts from the definition of ''breach'' inadvertent disclosures from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at the same facility if the information is not further used or disclosed without authorization. We have modified the statutory language slightly to except from breach inadvertent disclosures of protected health information from a person who is authorized to access protected health information at a covered entity or business associate to another person authorized to access protected health information at the same covered entity, business associate, or organized health care arrangement in which the covered entity participates. Organized health care arrangement is defined by the HIPAA Rules to mean, among other things, a clinically integrated care setting in which individuals typically receive health care from more than one health care provider.[10] See 45 CFR 160.103. This includes, for example, a covered entity, such as a hospital, and the health care providers who have staff privileges at the hospital.

We received several comments with respect to this exception, and many commenters asked that we clarify and explain the statutory language regarding what it means to be a ''similarly situated individual'' and what constitutes the ''same facility'' for purposes of this exception. We believe that a ''similarly situated individual,'' for purposes of the statute, means an individual who is authorized to access protected health information, and thus, for clarity, we have substituted this language for the statutory language in the regulation. Thus, a person who is authorized to access protected health information is similarly situated, for purposes of this regulation, to another person at the covered entity, business associate of the covered entity, or organized health care arrangement in which the covered entity participates, who is also authorized to access protected health information (even if the two persons may not be authorized to access the same types of protected health information). For example, a physician who has authority to use or disclose protected health information at a hospital by virtue of participating in an organized health care arrangement with the hospital is similarly situated to a nurse or billing employee at the hospital. In contrast, the physician is not similarly situated to an employee at the hospital who is not authorized to access protected health information.

Additionally, we have interpreted ''same facility'' to mean the same covered entity, business associate, or organized health care arrangement in which the covered entity participates and have substituted this language in the regulation. By focusing on the legal entity or status of the entities as an organized health care arrangement when interpreting ''same facility,'' we believe we have more clearly captured the intent of the statute and have also alleviated commenter concerns that the term ''facility'' was too narrow. Therefore, the size of the covered entity,

[10] 45 CFR 160.103 also defines ''organized health care arrangement'' to include ''an organized system of health care in which more than one covered entity participates'' and in which the participating covered entities engage in certain joint utilization review, quality assessment and improvement, or payment activities. In addition, the definition encompasses certain relationships between group health plans and health insurance issuers or health maintenance organizations (HMO), as well as relationships among group health plans which are maintained by the same plan sponsor.

business associate, or organized health care arrangement will dictate the scope of this exception. If a covered entity has a single location, then the exception will apply to disclosures between a workforce member and, e.g., a physician with staff privileges at that single location. However, if a covered entity has multiple locations across the country, the same exception will apply even if the workforce member makes the disclosure to a physician with staff privileges at a facility located in another state.

We interpret the statutory limitation that the information not be ''further acquired, accessed, used, or disclosed without authorization'' as meaning that the information is not further used or disclosed in a manner not permitted by the Privacy Rule. Thus, this exception encompasses circumstances in which a person who is authorized to use or disclose protected health information within a covered entity, business associate, or organized health care arrangement inadvertently discloses that information to another person who is authorized to use or disclose protected health information within the same covered entity, business associate, or organized health care arrangement, as long as the recipient does not further use or disclose the information in violation of the Privacy Rule.

The final regulatory exception to breach at paragraph (2)(iii) of this definition mirrors the exception found in section 13400(1)(A) of the Act. The statute excepts from the definition of ''breach'' situations in which the unauthorized person to whom protected health information has been disclosed would not reasonably have been able to retain the information. We have slightly modified this language to except from ''breach'' situations where a covered entity or business associate has a good faith belief that the unauthorized person to whom the disclosure of protected health information was made would not reasonably have been able to retain the information.

For example, a covered entity, due to a lack of reasonable safeguards, sends a number of explanations of benefits (EOBs) to the wrong individuals. A few of the EOBs are returned by the post office, unopened, as undeliverable. In these circumstances, the covered entity can conclude that the improper addressees could not reasonably have retained the information. The EOBs that were not returned as undeliverable, however, and that the covered entity knows were sent to the wrong individuals, should be treated as potential breaches.

As another example, a nurse mistakenly hands a patient the discharge papers belonging to another patient, but she quickly realizes her mistake and recovers the protected health information from the patient. If the nurse can reasonably conclude that the patient could not have read or otherwise retained the information, then this would not constitute a breach.

With respect to any of the three exceptions discussed above, a covered entity or business associate has the burden of proof, pursuant to § 164.414(b) (discussed below), for showing why breach notification was not required. Accordingly, the covered entity or business associate must document why the impermissible use or disclosure falls under one of the above exceptions.

Based on the above, we envision that covered entities and business associates will need to do the following to determine whether a breach occurred. First, the covered entity or business associate must determine whether there has been an impermissible use or disclosure of protected health information under the Privacy Rule. Second, the covered entity or business associate must determine, and document, whether the impermissible use or disclosure compromises the security or privacy of the protected health information. This occurs when there is a significant risk of financial, reputational, or other harm to the individual. Lastly, the covered entity or business associate may need to determine whether the incident falls under one of the exceptions in paragraph (2) of the breach definition.

We treat the breach as having occurred at the time of the impermissible use or disclosure (or in the case of the exceptions listed at paragraphs (2)(i) and (ii) of the definition of ''breach,'' at the time of the ''further'' impermissible use or disclosure), but recognize that a covered entity or business associate may require a reasonable amount of time to confirm whether the incident qualifies as a breach. As discussed below, a breach is considered discovered when the incident becomes known, not when the covered entity or business associate concludes the above analysis of whether the facts constitute a breach.

2. Unsecured Protected Health Information

The interim final rule adopts a definition of ''unsecured protected health information'' to identify to what information the breach notification provisions apply. Section 13402(h)(1)(A) of the Act defines ''unsecured protected health information'' as ''protected health information that is not secured through the use of a technology or methodology specified by the Secretary in guidance issued under [section 13402(h)(2)].'' Further, the Act at section 13402(h)(2) requires that the Secretary specify in the guidance the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals. Accordingly, the interim final rule defines ''unsecured protected health information'' to mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance. We also provide in the regulation that the guidance will be published on the HHS Web site.

Section 13402(h)(2) of the Act required that the Secretary initially issue such guidance, after consultation with stakeholders, no later than 60 days after enactment, or April 17, 2009. As discussed above, the Secretary issued the guidance along with a request for information on April 17, 2009, on the HHS Web site at *http://www.hhs.gov/ocr/privacy/* and the guidance was later published in the **Federal Register** on April 27, 2009 (74 FR 19006). The Department has reviewed the public comment received in response to the request for information and provides an update to the guidance in Section II of this document. As provided in this interim final rule, this updated guidance is also (and any future updates will be) available on the HHS Web site at *http://www.hhs.gov/ocr/privacy/*.

We note that the definition of ''unsecured protected health information'' in the Act and this interim final rule incorporates generally the term ''protected health information,'' as defined at 45 CFR 160.103 of the HIPAA Rules, which includes information in any form or medium. Accordingly, the term ''unsecured protected health information'' can include information in any form or medium, including electronic, paper, or oral form.

C. Notification to Individuals—Section 164.404

Section 164.404 of the interim final rule provides the requirements for the notifications covered entities are to provide to individuals affected by a breach of unsecured protected health information. This section includes implementation specifications regarding timeliness, content, and methods of the notice.

General Rule

Section 164.404(a)(1) provides the general rule that a covered entity shall, following the discovery of a breach of unsecured protected health information, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, used, or disclosed as a result of such breach. This regulatory provision implements section 13402(a) of the Act, but does not include the phrase ''that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses'' used in the statute to describe a covered entity's actions with respect to unsecured protected health information because inclusion of such terms was deemed unnecessary. In addition, the statute refers to protected health information that has been ''accessed, acquired, or disclosed''; it does not include ''used.'' In contrast, the statutory definition of ''breach'' refers to the ''acquisition, access, use, or disclosure'' of protected health information. For consistency with the definition, therefore, we have added ''used'' to the list of actions for which notification is required in § 164.404(a)(1).

Breaches Treated as Discovered

Section 164.404(a)(2) states that a breach shall be treated as discovered by a covered entity as of the first day the breach is known to the covered entity, or by exercising reasonable diligence would have been known to the covered entity. Thus, a covered entity is not liable for failing to provide notification in cases in which it is not aware of a breach unless the covered entity would have been aware of the breach had it exercised reasonable diligence. Section 164.404(a)(2) further provides that a covered entity is deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is a workforce member or agent of the covered entity (determined in accordance with the federal common law of agency). These provisions implement section 13402(c) of the Act but clarify that the federal common law of agency is to control in determining who is an agent of the covered entity. This approach is consistent with the HIPAA Enforcement Rule (45 CFR part 160, subparts C through E), which provides that the federal common law of agency applies in determining agency liability under the HIPAA Rules.

We have also modified the statutory language slightly to better conform to existing language in the HIPAA Enforcement Rule by incorporating the term ''by exercising reasonable diligence.'' The term ''reasonable diligence'' means the ''business care and prudence expected from a person seeking to satisfy a legal requirement under similar circumstances.'' We have made these clarifications for consistency and uniformity across the regulations.

Because a covered entity or business associate is liable for failing to provide notice of a breach when the covered entity or business associate did not know—but by exercising reasonable diligence would have known—of a breach, it is important for such entities to implement reasonable systems for discovery of breaches. We also note that these provisions attribute knowledge of a breach by a workforce member or other agent (other than the person committing the breach), such as certain business associates, to the covered entity itself. This is important, as knowledge of a breach, *i.e.,* when a breach is treated as ''discovered,'' starts the clock in terms of the period of time a covered entity has to make the notifications required by the interim final rule. Thus, covered entities should ensure their workforce members and other agents are adequately trained and aware of the importance of timely reporting of privacy and security incidents and of the consequences of failing to do so.

Timeliness

Regarding timeliness of individual notifications, § 164.404(b) mirrors the statutory requirement in section 13402(d) of the Act and requires that, except when law enforcement requests a delay in accordance with § 164.412 (provision discussed below), a covered entity shall send the required notification without unreasonable delay and in no case later than 60 calendar days after the date the breach was discovered by the covered entity. Thus, provisions for timeliness should be read together with the above provisions for when a breach is treated as discovered. We expect a covered entity to make the individual notifications as soon as reasonably possible. The covered entity may take a reasonable time to investigate the circumstances surrounding the breach, in order to collect and develop the information that § 164.404(c) requires to be included in the notice to the individual. As discussed below, covered entities are also permitted to provide the required information to individuals within the required time period in multiple mailings as the information becomes available.

In response to the RFI, some commenters suggested that suspected but unconfirmed breaches should not be treated as discovered until all the facts of the breach could be confirmed. Others suggested that 60 days was an insufficient amount of time to conduct a complete investigation and send the required notifications. We disagree. Waiting longer than 60 days to notify individuals of breaches of their unsecured protected health information could substantially increase the risk of harm to individuals as a result of the breach and decrease the ability of the individuals to effectively protect themselves from such harm. The statute and interim final rule provide that the notification must be provided without unreasonable delay and in no case later than 60 calendar days. The purpose of this period is to give covered entities and business associates time to conduct a prompt investigation into the incident to identify and collect the information needed to provide meaningful notice to the individual about what happened. Thus, the time period for breach notification begins when the incident is first known, not when the investigation of the incident is complete, even if it is initially unclear whether the incident constitutes a breach as defined in this rule.

Further, the duration of an investigation is limited by the statute and interim final rule's requirement that any delay be reasonable—the investigation cannot take an unreasonable amount of time. Thus, if a covered entity learns of an impermissible use or disclosure but unreasonably allows the investigation to lag for 30 days, this would constitute an unreasonable delay. Further, the 60 days is an outer limit and therefore, in some cases, it may be an ''unreasonable delay'' to wait until the 60th day to provide notification. For example, if a covered entity has compiled the information necessary to provide notification to individuals on day 10 but waits until day 60 to send the notifications, it would constitute an unreasonable delay despite the fact that the covered entity has provided notification within 60 days.

We also note that if a covered entity promptly investigates a reported breach and can swiftly conclude that there was no breach, then the covered entity need not send out breach notifications. For example, where a laptop with unsecured protected health information is initially reported by an employee to be stolen but is discovered the next day in another secure office within the

covered entity, then the covered entity need not send out breach notifications.

Content

Section 13402(f) of the Act sets forth the content requirements for the breach notice to the individual. Section 164.404(c) of the interim final rule implements section 13402(f) of the Act and requires the notification to include, to the extent possible, the following elements: (1) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (2) A description of the types of unsecured protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); (3) any steps individuals should take to protect themselves from potential harm resulting from the breach; (4) a brief description of what the covered entity involved is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and (5) contact procedures for individuals to ask questions or learn additional information, which must include a toll-free telephone number, an e-mail address, Web site, or postal address. With respect to indicating in the notification the types of protected health information involved in a breach, we emphasize that this provision requires covered entities to describe only the types of information involved. Thus, covered entities should not include a listing of the actual protected health information that was breached (e.g., list in the notice the individual's social security number or credit card number that was breached) and generally should avoid including any sensitive information in the notification itself. Further, in the interim final rule at § 164.404(c)(1)(B), we add the term ''diagnosis'' in the parenthetical listing of examples of types of protected health information to make clear that, where appropriate, a covered entity may need to indicate in the notification to the individual whether and what types of treatment information were involved in a breach. In addition, at § 164.404(c)(1)(D), we replace the statutory term ''mitigate losses'' with ''mitigate harm to the individual'' to make clear that the notification should describe the steps the covered entity is taking to mitigate potential harm to the individual resulting from the breach and that such harm is not limited to economic loss.

Under these content requirements, for example, and depending on the circumstances, the notice to the individual may include recommendations that the individual contact his or her credit card company and information about how to contact the credit bureaus and obtain credit monitoring services (if credit card information was breached); information about steps the covered entity is taking to retrieve the breached information, such as filing a police report (if a suspected theft of unsecured protected health information occurred); information about steps the covered entity is taking to improve security to prevent future similar breaches; and information about sanctions the covered entity imposed on workforce members involved in the breach.

Some commenters recommended that we impose a page limitation on the length of the notice (e.g., one page in length) and ensure the content of the notice is non-technical and non-complex so individuals can easily understand the information being provided. We agree that it is important for individuals to be able to understand the information being provided to them in the breach notifications and thus, at § 164.404(c)(2) of the interim final rule, include a requirement that such notifications be written in plain language. To satisfy this requirement, the covered entity should write the notice at an appropriate reading level, using clear language and syntax, and not include any extraneous material that might diminish the message it is trying to convey. We do not impose a page limitation, however, so as not to constrain covered entities in including in the notifications the information they believe could be helpful to individuals.

Further, we note that some covered entities may have obligations under other laws with respect to their communication with affected individuals. For example, to the extent a covered entity is obligated to comply with Title VI of the Civil Rights Act of 1964, the covered entity must take reasonable steps to ensure meaningful access for Limited English Proficient persons to the services of the covered entity, which could include translating the notice into frequently encountered languages. Similarly, to the extent that a covered entity is obligated to comply with Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, the covered entity has an obligation to take steps that may be necessary to ensure effective communication with individuals with disabilities, which could include making the notice available in alternate formats, such as Braille, large print, or audio.

Methods of Notification

Section 13402(e)(1) of the Act provides for both actual written notice to the individual, as well as substitute notice to the individual if contact information is insufficient or out-of-date. Accordingly, the interim final rule at § 164.404(d) adopts the statutory provisions for actual and substitute breach notification to the individual.

Section 164.404(d)(1)(i) requires a covered entity to provide breach notice to the individual in written form by first-class mail at the last known address of the individual. Consistent with the statute, the interim final rule also provides that written notice may be in the form of electronic mail, provided the individual agrees to receive electronic notice and such agreement has not been withdrawn. We note that, consistent with § 164.502(g) of the Privacy Rule, where the individual affected by a breach is a minor or otherwise lacks legal capacity due to a physical or mental condition, notice to the parent or other person who is the personal representative of the individual will satisfy the requirements of § 164.404(d)(1). The statute also requires that, if the individual is deceased, notice must be sent to the last known address of the next of kin. The interim final rule adopts this provision at § 164.404(d)(1)(ii), but provides that such notice be sent to either the individual's next of kin or personal representative, as such term is used for purposes of the Privacy Rule, recognizing that in some cases, a covered entity may have contact information for a personal representative of a deceased individual rather than the next of kin. We believe this conforms to the intent of the statute and improves consistency between this subpart and the Privacy Rule. Under 45 CFR 164.502(g), a ''personal representative'' of a deceased individual is a person who has authority to act on behalf of the decedent or the decedent's estate. The interim final rule also clarifies that a covered entity is only required to provide notice to next of kin or the personal representative if the covered entity both knows the individual is deceased and has the address of the next of kin or personal representative of the decedent. This clarification should address some of the comments which raised both administrative and privacy concerns with a covered entity being required to obtain contact information for next of kin of a deceased patient, if the individual did not otherwise provide the information while alive.

If a covered entity does not have sufficient contact information for some or all of the affected individuals, or if some notices are returned as undeliverable, the covered entity must provide substitute notice for the unreachable individuals in accordance with § 164.404(d)(2) of the interim final rule. Substitute notice should be provided as soon as reasonably possible after the covered entity is aware that it has insufficient or out-of-date contact information for one or more affected individuals. Whatever form of substitute notice is provided, the notice must contain all the elements that § 164.404(c) requires be included in the direct written notice to individuals. With respect to decedents, however, the rule provides that a covered entity is not required to provide substitute notice for the next of kin or personal representative in cases where the covered entity either does not have contact information or has out-of-date contact information for the next of kin or personal representative.

Section 164.404(d)(2) requires that the substitute form of notice be reasonably calculated to reach the individuals for whom it is being provided. If there are fewer than 10 individuals for whom the covered entity has insufficient or out-of-date contact information to provide the written notice, § 164.404(d)(2)(i) permits the covered entity to provide substitute notice to such individuals through an alternative form of written notice, by telephone, or other means. For example, if the covered entity learns that the home address it has for one of its patients is out-of-date but it has the patient's e-mail address, it may provide substitute notice by e-mail even if the patient has not agreed to electronic notice. Similarly, in the above example, if the covered entity has a current telephone number rather than e-mail address for the patient, then the covered entity may telephone the patient and provide the information required by the notice over the phone. We note, however, that the covered entity should be sensitive to not unnecessarily disclose protected health information in the process of providing substitute notice, such as where the covered entity leaves an answering machine message that could be picked up by other household members. In such cases, the covered entity should take care to limit the amount of information disclosed on an answering machine message, such as, for example, by leaving only its name and number and indicating it has a very important message for the individual. Alternatively, posting a notice on the Web site of the covered entity or at another location may be appropriate if the covered entity lacks any current contact information for the patients, so long as the posting is done in a manner that is reasonably calculated to reach the individuals.

If a covered entity has insufficient or out-of-date contact information for 10 or more individuals, then § 164.404(d)(2)(ii) requires the covered entity to provide substitute notice through either a conspicuous posting for a period of 90 days on the home page of its Web site or conspicuous notice in major print or broadcast media in geographic areas where the individuals affected by the breach likely reside. As described above, these substitute notifications must be provided in a manner that is reasonably calculated to reach the affected individuals. In addition, substitute notice through the Web site or media for 10 or more individuals requires the covered entity to have a toll-free phone number, active for 90 days, where an individual can learn whether the individual's unsecured protected health information may be included in the breach and to include the number in the notice.

If the covered entity chooses to provide substitute notice on the home page of its Web site, the notice must be conspicuous and posted for at least 90 days. A covered entity may provide all the information described at § 164.404(c) directly on its home page or may provide a hyperlink to the notice containing such information. We interpret ''home page'' to include the home page for visitors to the covered entity's Web site and the landing page or login page for existing account holders. If a covered entity uses a hyperlink on the home page to convey the substitute notice, the hyperlink should be prominent so that it is noticeable given its size, color, and graphic treatment in relation to other parts of the page, and it should be worded to convey the nature and importance of the information to which it leads.

Alternatively, or if the covered entity does not have or does not wish to use a Web site for the substitute notice, the covered entity may provide substitute notice of the breach in major print or broadcast media in geographic areas where the individuals affected by the breach likely reside. What constitutes major print or broadcast media for a particular area will depend on the geographic area where the affected individuals are likely to reside and what is reasonably calculated to reach the affected individuals. We emphasize that what is considered major print or broadcast media for a metropolitan area may be very different from what is considered major print or broadcast media in a rural area. For example, if the affected individuals are reasonably likely to reside in a rural area, then a local newspaper could be the major newspaper serving that area and most likely to reach the individuals affected. For affected individuals in a metropolitan area, then a newspaper serving the entire metropolitan area or the entire State would be more likely to reach the individuals affected. If the affected individuals likely reside in different regions or States, then the covered entity may need to utilize multiple media outlets to reasonably reach these individuals.

Also, we clarify in this interim final rule that any notice in print or broadcast media under this section must be conspicuous, similar to the posting on the Web site. Thus, for example, for notice in print media, thought should be given to what location and duration of the notice is reasonably calculated to reach the affected individuals.

Some commenters were concerned that providing substitute notice in major media would be costly and onerous. Covered entities that are concerned with the cost of providing substitute notice in this manner have the option of instead posting the substitute notice on their Web sites. For smaller covered entities that do not have Web sites, we would expect those covered entities generally serve a patient population located in a relatively compact and discrete area. In such cases, the geographic area in which the affected individuals reside would be comparably small, and, therefore, we do not believe that providing substitute notice in the appropriate local newspaper or television station would be excessively costly or onerous. Finally, we note that covered entities with out-of-date or insufficient contact information for some individuals can attempt to update the contact information so that they can provide direct written notification, in order to limit the number of individuals for whom substitute notice is required and, thus, potentially avoid the obligation to provide substitute notice through a Web site or major print or broadcast media under § 164.404(d)(2)(ii).

Other commenters were concerned that the requirement to include a toll-free phone number in the substitute media notice would overly burden a covered entity with calls from individuals unaffected by the breach. We note that the statute requires that covered entities include a toll-free phone number in cases where substitute notice is required for 10 or more individuals. Covered entities concerned

with the number of calls they may receive from unaffected individuals may wish to include sufficient information in the notice itself or a Web address in the notice for more information (or other means) as a way for individuals to determine whether their information may have been included in the breach.

Additional Notice in Urgent Situations

Finally, § 164.404(d)(3) of the interim final rule implements the provision in the statute at section 13402(e)(1)(c), which makes clear that notice by telephone or other means may be made, in addition to written notice, in cases deemed by the covered entity to require urgency because of possible imminent misuse of unsecured protected health information. We emphasize, however, that such notice, if utilized, is in addition to, and not in lieu of, the direct written notice required by § 164.404(d)(1).

D. Notification to the Media—164.406

Section 164.406 implements section 13402(e)(2) of the Act, which requires that notice be provided to prominent media outlets serving a State or jurisdiction, following the discovery of a breach if the unsecured protected health information of more than 500 residents of such State or jurisdiction is, or is reasonably believed to have been, accessed, acquired, or disclosed during such breach. This media notice differs from the substitute media notice described in § 164.404(d)(1)(2) in that it is directed ''to'' the media and is intended to supplement, but not substitute for, individual notice. The Act requires that notification to the media under this provision be provided within the same timeframe as notice is to be provided to the individual. See section 13402(d)(1) of the Act. Accordingly, § 164.406(b) of the interim final rule requires a covered entity to notify prominent media outlets without unreasonable delay and in no case later than 60 calendar days after discovery of the breach. In paragraph (c) of this section, we require that notification to the media under this provision include the same information required to be included in the notification to the individual under § 164.404(c). We expect that most covered entities will provide notification to the media under this section in the form of a press release.

Commenters asked that we define what constitutes a ''prominent media outlet.'' We do not define ''prominent media outlet'' in this regulation because what constitutes a prominent media outlet will differ depending upon the State or jurisdiction affected. For example, for a breach affecting 500 or more individuals across a particular state, a prominent media outlet may be a major, general-interest newspaper with a daily circulation throughout the entire state. In contrast, a newspaper serving only one town and distributed on a monthly basis, or a daily newspaper of specialized interest (such as sport, politics) would not be viewed as a prominent media outlet. If a breach affects 500 or more individuals in a limited jurisdiction, such as a city, then a prominent media outlet may be a major, general-interest newspaper with daily circulation throughout the city, even though the newspaper does not serve the whole State.

Commenters also asked HHS to clarify what is meant by ''State or jurisdiction'' for purposes of notice to the media under this provision. We note that ''State'' is already defined at § 160.103 of the HIPAA Rules to mean ''any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.'' That definition applies to this new provision. We also note that the Act includes a definition of ''State'' which applies for purposes of this provision and defines ''State'' to include, in addition to what is included at § 160.103, American Samoa and the Northern Mariana Islands. Thus, we provide at § 164.406(a) that, for purposes of this provision, ''State'' also includes American Samoa and the Northern Mariana Islands. With respect to jurisdiction, we clarify that, for purposes of this provision, jurisdiction is a geographic area smaller than a state, such as a county, city, or town.

To illustrate how these provisions apply, we provide the following example. If laptops containing the unsecured protected health information of more than 500 residents of a particular city were stolen from a covered entity, notification under this section should be provided to prominent media outlets serving that city. In this case, the prominent media outlet may be a major television station or newspaper (or other media outlet) serving primarily the residents of that city or a prominent media outlet serving the entire state. Alternatively, for a breach involving 500 or more residents across a State and not within any one particular county or city of the State, the prominent media outlet chosen must serve the entire State.

In response to comments received, we also offer clarification on how to address a breach involving residents in multiple States or jurisdictions. For example, if a covered entity discovers a breach of 600 individuals, 200 of which reside in Virginia, 200 of which reside in Maryland, and 200 of which reside in the District of Columbia, such a breach did not affect more than 500 residents of any one State or jurisdiction, and as such, notification is not required to be provided to the media pursuant to § 164.406. However, individual notification under § 164.404 would be required, as would notification to the Secretary under § 164.408 because the breach involved 500 or more individuals. Conversely, if a covered entity discovered a breach of unsecured protected health information involving 600 residents within the state of Maryland and 600 residents of the District of Columbia, notification must be provided to a prominent media outlet serving the state of Maryland and to a prominent media outlet serving the District of Columbia.

We also recognize that in some cases a breach may occur at a business associate and involve the protected health information of multiple covered entities. In that case, a covered entity involved would only be required to provide notification to the media if the information breached included the protected health information of 500 or more individuals located in any one State or jurisdiction. For example, if a business associate discovers a breach affecting 800 individuals, the business associate must notify the appropriate covered entity (or covered entities) subject to § 164.410 (discussed below). If 450 of the affected individuals are patients of one covered entity and the remaining 350 are patients of another covered entity, because the breach has not affected more than 500 individuals at either covered entity, there is no obligation to provide notification to the media under this section. Additionally, neither covered entity has the obligation of notifying the Secretary under § 164.408(b) concurrently with notice to the affected individuals; however, both covered entities must include this breach in their annual submission to the Secretary pursuant to § 164.408(c). In cases where the entities involved are unable to determine which entity's protected health information was involved, the covered entities may consider having the business associate provide the notification to the media on behalf of all of the covered entities.

Section 164.406(c) sets forth the content requirement for covered entities notifying the media. In this section, we require that the notice to the media include the same content as that required for notification to the individual under § 164.404(c). We emphasize that this provision does not replace either direct written or

substitute notice to the individual under § 164.404. If a covered entity is required to provide substitute notice under § 164.404(d)(2)(ii)(A) and chooses to do so through major print or broadcast media, notification to the media under this section would only satisfy such substitute notice if the prominent media outlet ran a notification reasonably calculated to reach the individuals for which substitute notice was required and included all the information required be provided in the individual notice, including the toll-free number required by § 164.404(d)(2)(ii)(B).

E. Notification to the Secretary—164.408

Section 164.408 of the interim final rule implements section 13402(e)(3) of the Act, which requires covered entities to notify the Secretary of breaches of unsecured protected health information. For breaches involving 500 or more individuals, the Act requires covered entities to notify the Secretary immediately. For breaches involving less than 500 individuals, the Act provides that a covered entity may maintain a log of such breaches and annually submit such log to the Secretary documenting the breaches occurring during the year involved.

Section 164.408(a) of the interim final rule contains the general rule that requires a covered entity to notify the Secretary following the discovery of a breach of unsecured protected health information. Section 164.408(b) provides the implementation specification for breaches involving 500 or more individuals. Section 164.408(c) provides the implementation specification for breaches involving fewer than 500 individuals.

With respect to breaches involving 500 or more individuals, we interpret the term ''immediately'' in the statute to require notification be sent to the Secretary in the case of these larger breaches concurrently with the notification sent to the individual under § 164.404, which must be sent without unreasonable delay but in no case later than 60 calendar days following discovery of a breach. Many commenters were concerned that covered entities would be required to provide notification to the Secretary in a much shorter time frame than the other notifications required by the Act, making it difficult for covered entities to comply. This interpretation thus allows the notice to the Secretary to include all of the information provided in the notice to the individual and better avoids the situation where a covered entity reports information to the Secretary that later turns out to be incorrect because the entity did not have sufficient time to conduct an investigation into the facts surrounding the breach. In addition, this interpretation satisfies the statutory requirement that notifications of larger breaches be provided to the Secretary immediately as compared to the reports of smaller breaches the statute allows be reported annually to the Secretary. The interim final rule also provides that the notification be provided in a manner to be specified on the HHS Web site. The Department will post instructions on its Web site for submitting both this notification as well as the annual notification described below. In addition, as required by section 13402(e)(4) of the Act, the Secretary will post on the HHS Web site a list of covered entities that submit reports of breaches of unsecured protected health information involving more than 500 individuals.

Covered entities must notify the Secretary of discovered breaches involving more than 500 individuals generally, without regard to whether the breach involved more than 500 residents of a particular State or jurisdiction (the threshold for triggering notification to the media under § 164.406 of the interim final rule). Thus, where a covered entity has discovered a breach of 600 individuals, 300 of which reside in Maryland and 300 of which reside in the District of Columbia, notification of the breach must be provided to the Secretary concurrently with notification to the affected individuals. However, the breach in this example would not trigger the requirement to notify the media under § 164.406 because the breach did not involve more than 500 residents of any one State or jurisdiction.

For breaches involving less than 500 individuals, § 164.408(c) requires a covered entity to maintain a log or other documentation of such breaches and to submit information annually to the Secretary for breaches occurring during the preceding calendar year. As recommended by several commenters, we have designated a date for submission of the information to the Secretary. The interim final rule requires the submission of this information to the Secretary no later than 60 days after the end of each calendar year. As with notification of the larger breaches above, the interim final rule provides that information about breaches involving less than 500 individuals is to be provided to the Secretary in the manner specified on the HHS Web site. HHS will specify on its Web site the information to be submitted and how to submit such information.

For calendar year 2009, the covered entity is only required to submit information to the Secretary for breaches occurring after the effective date of this regulation, i.e., on or after September 23, 2009. Information about breaches occurring prior to that date need not be submitted. This is because, pursuant to § 164.400, this subpart only applies to breaches occurring on or after that date.

We emphasize that although covered entities need only provide notification to the Secretary of breaches involving less than 500 individuals annually, they must still provide notification of such breaches to affected individuals without unreasonable delay and not later than 60 days after discovery of the breach pursuant to § 164.404. In addition, we note that pursuant to § 164.414(a), a covered entity must follow the documentation requirements that otherwise apply to the HIPAA Privacy Rule under § 164.530 with respect to the requirements of this rule. Thus, pursuant to § 164.530(j)(2), covered entities must maintain the internal log or other documentation for six years. Further, as with other required documentation, a covered entity must make such information available to the Secretary upon request in accordance with § 160.310.

F. Notification by a Business Associate—164.410

Section 13402(b) of the Act requires a business associate of a covered entity that accesses, maintains, retains, modifies, records, destroys, or otherwise holds, uses, or discloses unsecured protected health information to notify the covered entity when it discovers a breach of such information. Section 164.410(a) implements section 13402(b) of the Act, but does not include the terms ''that accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses'' used in the statute to describe a business associate's actions with respect to unsecured protected health information because inclusion of such terms was deemed unnecessary.

Thus, following the discovery of a breach of unsecured protected health information, a business associate is required to notify the covered entity of the breach so that the covered entity can notify affected individuals. We clarify that a business associate that maintains the protected health information of multiple covered entities need notify only the covered entity(s) to which the breached information relates. However, in cases in which a breach involves the

unsecured protected health information of multiple covered entities and it is unclear to whom the breached information relates, it may be necessary to notify all potential affected covered entities.

We received several comments in support of adding a provision to require business associates to provide notice to a senior official or privacy official at the covered entity. We do not believe such a provision is necessary, however. Covered entities and business associates already have established business relationships and communication channels, including with respect to privacy and security matters. For example, the HIPAA Rules already require a business associate contract to provide that the business associate report to the covered entity uses or disclosures not provided by the contract as well as security incidents of which the business associate becomes aware. See 45 CFR 164.504(e)(2)(ii)(C) and 164.314(a)(2)(i)(C). Thus, we believe it is appropriate to leave it up to covered entities and business associates to determine how the required reporting should be implemented.

Section 164.410(a)(2) implements section 13402(c) of the Act, which provides when a breach is to be treated as discovered by the business associate. Accordingly, § 164.410(a)(2) states that a breach shall be treated as discovered by a business associate as of the first day on which such breach is known to the business associate or, by exercising reasonable diligence, would have been known to the business associate. Section 164.410(a)(2) further provides that a business associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the business associate (determined in accordance with the federal common law of agency). As with § 164.404(a)(2) with respect to a covered entity's knowledge of a breach, we clarify in this provision that the federal common law of agency is to control in determining who is an agent of the covered entity. This approach is consistent with the HIPAA Enforcement Rule (45 CFR part 160, subparts C through E), which provides that the federal common law of agency applies in determining agency liability under the HIPAA Rules. Also, as with § 164.404(a)(2), we have modified the statutory language slightly to better conform to existing language in the HIPAA Enforcement Rule at 45 CFR 160.410, by incorporating the term ''reasonable diligence.'' We have made these clarifications for consistency and uniformity across the regulations.

Section 164.410(b) implements section 13402(d)(1) of the Act and provides that, with the exception provided in § 164.412, a business associate must provide notice of a breach of unsecured protected health information to a covered entity without unreasonable delay and in no case later than 60 days following the discovery of a breach. With respect to breaches at the business associate, the covered entity must provide the required notifications to affected individuals under § 164.404(a) without unreasonable delay, but no later than 60 days.

If a business associate is acting as an agent of a covered entity, then, pursuant to § 164.404(a)(2), the business associate's discovery of the breach will be imputed to the covered entity. Accordingly, in such circumstances, the covered entity must provide notifications under § 164.404(a) based on the time the business associate discovers the breach, not from the time the business associate notifies the covered entity. In contrast, if the business associate is an independent contractor of the covered entity (i.e., not an agent), then the covered entity must provide notification based on the time the business associate notifies the covered entity of the breach. As reflected in the comments we received in response to the timing of business associate notification to a covered entity following a breach, covered entities may wish to address the timing of the notification in their business associate contracts.

Section 164.410(c) implements the second sentence of section 13402(b) of the Act, which specifies the information that a business associate must provide to a covered entity following a breach of unsecured protected health information. Section 164.410(c)(1) requires business associates, to the extent possible, to provide covered entities with the identity of each individual whose unsecured protected health information has been, or is reasonably believed to have been, breached. Depending on the circumstances, business associates may provide the covered entity with immediate notification of the breach, as discussed above and then follow up with the required information in § 164.410(c) when available but without unreasonable delay and within 60 days.

Section 164.410(c)(1) departs slightly from the statutory language by only requiring business associates to provide this information ''to the extent possible.'' Based on some comments received, we recognize that there may be situations in which a business associate may be unaware of the identification of the individuals whose unsecured protected health information was breached. For example, a business associate that is a record storage company holds hundreds of boxes of paper medical records on behalf of a covered entity. The business associate discovers that several boxes are missing and is unable to provide the covered entity with a list of the individuals whose information has been breached. It is not our intent that the business associate delay notification of the breach to the covered entity, when the covered entity may be better able to identify the individuals affected.

Further, we recognize that, depending on the circumstances surrounding a breach of unsecured protected health information, a business associate may be in the best position to gather the information the covered entity is required by § 164.404(c) to include in the notification to the individual about the breach. Thus, in addition to the identification of affected individuals, § 164.410(c)(2) requires a business associate to provide the covered entity with any other available information that the covered entity is required to include in the notification to the individual under § 164.404(c), either at the time it provides notice to the covered entity of the breach or promptly thereafter as information becomes available. Because we allow this information to be provided to a covered entity after the initial notification of the breach as it becomes available, a business associate should not delay the initial notification to the covered entity of the breach in order to collect information needed for the notification to the individual. To ensure the covered entity is aware of all the available facts surrounding a breach, we also note that a business associate should provide this information even if it becomes available after notifications have been sent to affected individuals or after the 60-day period specified in § 164.410(b) has elapsed.

In response to a significant number of commenters who expressed concern that this requirement would prevent covered entities and their business associates from addressing these issues in their business associate contracts, we emphasize that we do not intend for this section to interfere with the current relationship between covered entities and their business associates. Business associates and covered entities will continue to have the flexibility to set forth specific obligations for each party, such as who will provide notice to individuals and when the notification from the business associate to the

covered entity will be required, following a breach of unsecured protected health information, so long as all required notifications are provided and the other requirements of the interim final rule are met. We encourage the parties to consider which entity is in the best position to provide notice to the individual, which may depend on circumstances, such as the functions the business associate performs on behalf of the covered entity and which entity has the relationship with the individual. We also encourage the parties to ensure the individual does not receive notifications from both the covered entity and the business associate about the same breach, which may be confusing to the individual.

Finally, we note that where an entity provides PHRs to customers of a HIPAA covered entity through a business associate arrangement but also provides PHRs directly to the public and a breach of its records occurs, in certain cases, as described in its rule, the FTC will deem compliance with certain provisions of HHS' rule as compliance with FTC's rule. In particular, in such situations, it may be appropriate for the vendor to provide the same breach notice to all its PHR customers since it has a direct relationship with all the affected individuals. Thus, in those limited circumstances where a vendor of PHRs (1) provides notice to individuals on behalf of a HIPAA covered entity, (2) has dealt directly with these individuals in managing their personal health record accounts, and (3) provides notice to its customers at the same time, the FTC will deem compliance with HHS requirements governing the timing, method, and content of notice to be compliance with the corresponding FTC rule provisions.[11]

G. Law Enforcement Delay—164.412

Section 13402(g) of the Act provides that if a law enforcement official determines that a notification, notice, or posting required under this section would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed in the same manner as provided under 45 CFR 164.528(a)(2) of the Privacy Rule in the case of a disclosure covered under such section. Section 164.412 implements section 13402(g) of the Act and thus, requires a covered entity or business associate to temporarily delay notification under §§ 164.404, 164.406, 164.408, and 164.410 if instructed to do so by a law enforcement official.

We retain the definition of ''law enforcement official'' currently used in the Privacy Rule at § 164.501, which defines such person as ''an officer or employee of any state agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.'' However, in this interim final rule, we move the definition up to § 164.103 so that it will apply to this subpart D as well as continue to apply to subpart E (Privacy Rule).

Section 164.412(a), which is based on the requirements of 45 CFR 164.528(a)(2)(i) of the Privacy Rule, provides for a temporary delay of notification in situations in which a law enforcement official provides a statement in writing that the delay is necessary because notification would impede a criminal investigation or cause damage to national security, and specifies the time for which a delay is required. In these instances, the covered entity is required to delay the notification, notice, or posting for the time period specified by the official.

Similarly, § 164.412(b), which is based on 45 CFR 164.528(a)(2)(ii) of the Privacy Rule, requires a covered entity or business associate to temporarily delay a notification, notice, or posting if a law enforcement official states orally that a notification would impede a criminal investigation or cause damage to national security. However, in this case, the covered entity or business associate is required to document the statement and the identity of the official and delay notification for no longer than 30 days, unless a written statement meeting the above requirements is provided during that time. We interpret these provisions as tolling the time within which notification is required under §§ 164.404, 164.406, 164.408, and 164.410, as applicable.

H. Administrative Requirements and Burden of Proof—164.414

Section 164.414(a) requires covered entities to comply with the administrative requirements of § 164.530(b), (d), (e), (g), (h), (i), and (j) of the Privacy Rule with respect to the breach notification provisions of this subpart. These provisions, for example, require covered entities and business associates to develop and document policies and procedures, train workforce members on and have sanctions for failure to comply with these policies and procedures, permit individuals to file complaints regarding these policies and procedures or a failure to comply with them, and require covered entities to refrain from intimidating or retaliatory acts. Thus, a covered entity is required to consider and incorporate the requirements of this subpart with respect to its administrative compliance and other obligations. In addition to § 164.414(a), to make clear that these provisions apply to this subpart as well as subpart E, we have made conforming modifications in each of the above sections of the Privacy Rule to include a reference to this subpart D.

Consistent with section 13402(d)(2) of the Act, § 164.414(b) provides that, following an impermissible use or disclosure under the Privacy Rule, covered entities and business associates have the burden of demonstrating that all notifications were made as required by this subpart. Additionally, as part of demonstrating that all required notifications were made, we clarify in the regulatory text that a covered entity or business associate, as applicable, also must be able to demonstrate that an impermissible use or disclosure did not constitute a breach, as such term is defined at § 164.402, in cases where the covered entity or business associate determined that notifications were not required. We also make conforming changes to § 160.534 of the HIPAA Enforcement Rule to make clear that, during any administrative hearing, the covered entity has the burden of going forward and the burden of persuasion with respect to these issues.

Thus, when a covered entity or business associate knows of an impermissible use or disclosure of protected health information, it should maintain documentation that all required notifications were made, or, alternatively, of its risk assessment (discussed above in § 164.402) or the application of any exceptions to the definition of ''breach'' to demonstrate that notification was not required.

I. Other Conforming Changes to the HIPAA Rules

In addition to the conforming modifications discussed above, we make the following changes to align the HIPAA Rules in light of the new breach notification requirements of this rule. First, we revise the statutory basis and purpose sections at §§ 160.101 and 164.102 to include references to section 13402 of the Act. Second, in Part 160, for purposes of the preemption of State

[11] We note, however, that with respect to the customers to whom it provides PHRs directly, the vendor must comply with all other FTC rule requirements, including the requirement to notify the FTC within ten business days after discovering the breach.

law, we amend § 160.202 to revise the definition of ''contrary'' to include a reference to section 13402 of the Act. (See below for a discussion of preemption and these new requirements.) Finally, in Part 164, subpart C, which contains the HIPAA Security Rule requirements, we revise the definition of ''access'' in § 164.304 to make clear that the definition does not apply to any use of the term in subpart D.

J. Preemption

We received several public comments regarding the issue of preemption and the interaction between this regulation and state breach notification laws. HIPAA (Pub. L. 104–191) added section 1178 of the Social Security Act, 42 U.S.C. 1320d–7, which sets forth the general effect of the HIPAA provisions on State law. Section 1178 provides that HIPAA administrative simplification provisions generally preempt conflicting State law. This section of the statute is implemented by 45 CFR 160.203, which states that a standard, requirement, or implementation specification that is adopted as regulation at 45 CFR parts 160, 162, or 164 and that is ''contrary to a provision of State law preempts the provision of State law.'' Section 160.203 provides several exceptions in which State law will not be preempted; however, we do not believe these exceptions apply to the breach notification regulations in 45 CFR part 164 subpart D.[12] Therefore, contrary State law will be preempted by these breach notification regulations. We solicit comment in this area.

Whether a State law is contrary to these breach notification regulations is to be determined based on the definition of ''contrary'' at § 160.202. A State law is contrary if ''a covered entity could find it impossible to comply with both the State and federal requirements'' or if the State law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives'' of the breach notification provisions in the Act. As discussed above, we make a conforming change to paragraph (2) of the definition of ''contrary'' in this section to incorporate reference to the breach notification provisions at section 13402 of the Act. Therefore, covered entities will need to analyze relevant State laws with respect to this regulation to understand the interaction and apply this preemption standard appropriately.

Although we received many comments concerning perceived conflicts between the interaction of State laws and these breach notification provisions, based on the ''contrary'' standard for preemption, in general we believe that covered entities can comply with both the applicable State laws and this regulation. In addition, based on the comments received, we believe that, in most cases, a single notification can satisfy the notification requirements under State laws and this regulation. For example, if a state breach notification law requires notification to be sent to the individual within five days following the detection of a breach, a covered entity that sends that notice within five days to comply with State law will also be in compliance with this regulation, as the covered entity must send the notification ''without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach.'' If covered entities do not have all the information required by this regulation available to them within five days, they may send the individual an additional notification when they have accumulated the appropriate information.

Likewise, if a State law requires a breach notification but requires additional elements be included in the notice, or requires that certain elements be described in a certain way, there is no conflict between the State law and this regulation. As the Act and interim final rule are flexible in terms of how the elements are to be described, and do not prohibit additional elements from being included in the notice, covered entities can develop a notice that satisfies both laws.

K. Effective/Compliance Date

Section 13402(j) of the Act states that section 13402 applies to breaches that are discovered by a covered entity or business associate on or after 30 calendar days from the date of publication of this interim final rule. Commenters expressed concern that this effective date did not allow enough time for covered entities to implement the guidance for rendering protected health information unusable, unreadable, or indecipherable to unauthorized individuals or have systems in place to comply with the requirements of the rule and suggested that compliance with these breach notification provisions not be required in 30 days.

In response, we note that the guidance on securing protected health information is not mandatory; it is discretionary. Accordingly, a covered entity or business associate will not be out of compliance with this subpart if, after the date set forth at § 164.400, the entity maintains unsecured protected health information. We recognize, though, that many covered entities and business associates are voluntarily choosing to secure their protected health information in accordance with the guidance in order to avoid the possibility of having to provide breach notifications pursuant to this subpart. We encourage covered entities and business associates to take such an approach—securing their protected health information—and understand that the process may take more than 30 days from the publication of this interim final rule.

We also recognize that it will take covered entities and business associates time to implement the processes and procedures necessary to comply with this subpart. For example, once compliance with this subpart is required, a covered entity or business associate will be held accountable for breaches that, through the exercise of reasonable diligence, would have been known to the entity. This means that a covered entity or business associate must have reasonable systems in place to detect breaches. Putting such systems in place may take some time.

On the other hand, the majority of states already have breach notification laws in place. While this interim final rule differs from any such State laws, we believe that most covered entities or business associates should already have some form of breach notification procedures in place. Those covered entities and business associates should be able to build upon such existing procedures in order to come into compliance with this interim final rule.

We have decided that, consistent with section 13402(j) of the Act, the provisions of this subpart are effective, and compliance is required, for breaches occurring on or after 30 calendar days from the publication of this rule. However, based on the concerns described above, and based on some ambiguity within the statute,[13] we will

[12] We do not interpret the preemption exception at § 160.203(b), which addresses more stringent State law related to privacy, as applying to these breach notification provisions because that paragraph only applies to the provisions of the Privacy Rule promulgated under section 264(c) of the HIPAA statute. See section 264(c)(2) of HIPAA.

[13] While section 13402(j) of the HITECH Act provides that section 13402 becomes effective 30 calendar days after publication of this interim final rule, it is section 13410(a)(2) that provides the Department with authority to impose civil money penalties, pursuant to § 1176 of the Social Security Act (42 U.S.C. 1320d–5), on violations by covered entities of the requirements imposed by the HITECH Act, including those of section 13402. Moreover, authority to impose civil money penalties on business associates for violations of the HITECH Act is provided by sections 13401(b) and 13404(c). Sections 13410(a)(2), 13401(b), and 13404(c) do not become effective until February 18, 2010 (see section 13423 of the Act). Thus, there is a statutory ambiguity due to the HITECH Act

use our enforcement discretion to not impose sanctions for failure to provide the required notifications for breaches that are discovered before 180 calendar days from the publication of this rule, or February 22, 2010. During this initial time period—after this rule has taken effect but before we are imposing sanctions—we expect covered entities to comply with this subpart and will work with covered entities, through technical assistance and voluntary corrective action, to achieve compliance.

V. Impact Statement and Other Required Analyses

A. Introduction

Section 13402 of the Act prescribes in specific terms the obligations and responsibilities on HIPAA covered entities to notify an affected individual when a breach of his or her unsecured protected health information occurs, to notify the Secretary, to notify the media in certain circumstances, and for business associates to notify covered entities of such breaches. In most instances, the interim final regulation adheres and conforms to the language of the statute in defining terms and in prescribing remedies. The rule tracks the language of the statute with regard to the actions covered entities must take to notify an affected individual when a reportable breach occurs, the time frame in which the covered entity must act, the mode of communicating with an affected individual and the content of the notice.

The prescriptive language of the statute leaves little discretion for the Secretary in how to implement the statute. Measures we have taken to modify the statutory language are minimal and were undertaken to make certain terms used in the statute conform to other parts of the HIPAA Rules. We also clarify when a breach of protected health information compromises the security or privacy of such information. Yet, because the statutory language is so detailed and specific as to the requirements and definitions placed on covered entities, and because we have endeavored to follow the statutory language as closely as possible, we believe that, in large measure, the economic burden imposed on covered entities results from the statute and not from the interim final regulation.

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of 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 one year). This interim final rule is not an economically significant rule because we estimate that the breach notification requirements are not expected to cost more than $100 million per year. Nevertheless, because of the public interest in this rule, we have prepared an RIA that to the best of our ability presents the costs and benefits of the proposed rule. We request comments on the economic analysis provided in this proposed rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The scope of the interim final rule will apply to all HIPAA covered entities and their business associates. Based on U.S. business census data provided to the Small Business Administration Office of Advocacy there were 605,845 entities classified under the North American Industrial Classification System (NAICS) 62. Code 62 encompasses physicians, dentists, ambulatory care centers, kidney dialysis centers, family planning clinics, home care services, mental health and drug rehabilitation centers, medical laboratories, hospitals and nursing facilities. In addition, based on data from the Centers for Medicare & Medicaid Services, we estimate that there are 107,567 suppliers of durable medical equipment and prosthetics. Almost all of these health providers fall under the RFA's definition of a small entity by either meeting the Small Business Administration's (SBA's) size standard of a small business or by being a non-dominant nonprofit organization. The SBA's size standard for NAICS 62 ranges between $7 million and $34.5 million in annual receipts. Also covered under HIPAA are health insurance firms and third party administrators (NAICS codes 524114 and 524292). The 2006 business census data show that there are 1,045 insurance firms and 3,522 third party administrators. Of the combined total of health insurance firms and third party administrators, we estimate that approximately 71 percent, or 3,266, meet the SBA's definition of a small entity of annual receipts of $7 million or less. Pharmacies are also considered covered entities under HIPAA (NAICS code 44611) and based on the 2007 National Association of Chain Drug Stores Industry Profile approximately 17,500 independent pharmacy drugstores meet the SBA definition of a small business of $7 million or less in annual receipts. For more information on SBA's size standards, see the Small Business Administration's Web site at *http://sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

Although the RFA only requires an initial regulatory flexibility analysis (IRFA) when an agency issues a proposed rule, the Department has a policy of voluntarily conducting an IRFA for interim final regulations. We examine the burden of the interim final regulation in section D below.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 is approximately $133 million. This rule will not impose an unfunded mandate on States, tribal government or the private sector of more than $133 million annually.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs of compliance on State and local governments, preempts State law, or otherwise has Federalism implications. Section 13421(a) of the Act expressly provides that provisions or requirements of subtitle D of the Act, which includes the provisions requiring breach notification, shall preempt State law in the same respect that the HIPAA Rules preempt State law pursuant to section 1178 of the Social Security Act. Accordingly, this rule expressly adopts the preemption provisions that are applicable to the HIPAA Rules and as discussed in *Section IV.J. Preemption* above.

B. Why Is This Rule Needed?

This regulation is required to implement section 13402 of the Act. The purpose of the statute is to establish a uniform requirement on all HIPAA

providing an effective date of 30 days from publication of this rule, but a later date for when the Department may impose civil money penalties for violations of section 13402.

covered entities to inform individuals of when the individual's unsecured protected health information has been improperly used or disclosed and the result of the improper use or disclosure may lead to financial damage, harm to the individual's reputation, or other harm. Without the statutory requirement for notifying an individual of data breaches, it would be left to the entity to decide whether to notify an affected individual or the decision would be subject to significantly varying State laws (which are generally focused on breaches of financial information rather than health information).

Because notification requires expenditures and exposes the covered entity to loss of business and possible legal action, there is little incentive for the entity to take such action. While individuals whose protected health information was improperly accessed would be forewarned and as a result of being notified, could take action to mitigate financial or personal harm, they may not continue to patronize the entity which notifies them. If alternative providers in the individual's community offer similar services, the individual may take their business to one of the alternative entities. Moreover, if other individuals, not directly affected by the breach, learn of the event, they too may seek services from other providers out of fear that their protected health information may be improperly accessed. The Ponenmon Institute, LLC report of February 2009, ''2008 Annual Study: Cost of a Data Breach'' estimates that 69 percent of the cost of a data breach is the result of lost business (see page 4). The study identifies the health care industry as experiencing the highest customer turnover rate directly attributable to data breaches of protected health information. Moreover, since a health care provider is unlikely to suffer financially from the direct loss of protected health information, there is little incentive for the covered entity to notify affected individuals.

In such situations, the covered entity may perceive that it is more beneficial to not disclose breaches. The possibility of lawsuits arising out of a lack of response to the breach represents a risk but one which is uncertain and lies in the future. This compares to the more imminent and certain risk of loss of business if the entity discloses the breach.

By imposing a duty on all covered entities to notify affected individuals of breaches of protected health information, the statute and the interim final regulation place a similar burden on all covered entities to notify affected individuals and run the same risk of losing business as a result of notification. Moreover, requiring breach notification creates an incentive on all covered entities to invest in data security improvements in efforts to minimize the possibility of reportable data breaches.

At the same time that the statute and interim final regulation create the incentive to minimize breaches of protected health information, in the event that a breach occurs, the affected individual will be notified and thereby be given an opportunity to mitigate any harm that may result from the breach.

C. Costs and Benefits

1. Summary of Costs and Benefits

Throughout the following analysis we invite comments on specific portions of our analysis. The public, however, is invited to offer comments on any and all elements of the analysis and the assumption underlying the analysis.

Costs: In the analysis that follows, we applied the provisions of the interim final regulation to the dataset of data breaches found at DataLossdb.org. The database shows, among other things, the name of the organization and the type of business, such as finance, medical, government, education, or business. The field called ''Total Affected'' shows a count of either records or individuals affected by the breach. Without examining the source reports of the breach, we do not know which is being reported. For these purposes, we will take the more conservative approach and assume that the count is of individuals. We acknowledge the possibility that an individual may have more than one record housed at a provider, especially if the provider is a multi-unit facility. An individual may have separate inpatient, outpatient, and clinic records. Thus, a major breach could involve more than one record per breach, and to the extent that this is the case, we may overstate the costs, which we believe is preferable to understating them.

The data we selected covers calendar year 2008 and includes the subset of breaches from medical firms or containing medical information. Our analysis, thus, not only includes HIPAA covered entities found in the dataset but may include business associates of HIPAA covered entities. In addition, the data may include breaches of health information that State agencies may hold such as Medicaid State agencies that also serve as health plans and are also HIPAA covered entities. Table 1 presents the estimated costs of the interim final rule based on 2008 breaches presented in the DataLossdb.org tables.

Upon examining the distribution of affected individuals and records for 2008, we identified one breach involving 2.2 million individuals. The incident occurred at a major university hospital system and involved the theft of backup tapes that were being transported to storage. The next highest breach affected 344,482 individuals. Including the outlier breach in our analysis, we believe, would significantly skew the analysis. Removing this case produces a more homogeneous distribution of affected individuals and improves the reliability of the analysis. Removing the outlier reduced the number of affected individuals from 5,087,032 to 2,887,032.

Although the type of data breach that occurred in 2008 was not unusual, the number of persons affected was six times greater than the next highest breach and the number of individuals affected is far from the average number for the year. In 2007, a State mental health agency reported the loss of records affecting 2.9 million individuals resulting from the agency's data processor's negligence. The next largest breach in 2007 involved 375,000 individuals and represents one eighth the number of individuals in the mental health agency breach.

Without doubt, breaches of the magnitude we see in the university hospital and State mental health breaches are a serious concern to the Department. Excluding such disproportionately large breaches from the cost analysis should not be construed as a lack of interest or concern in the security of protected health information at these institutions. We could have included the university hospital breach in our 2008 analysis, but it is clear that the incident does not represent the average or typical case. Since our purpose is to present and illustrate the costs of an average breach, we believe that the inclusion of the one unusually large breach in 2008 would skew the results and present a distorted picture of the level of costs that a typical covered entity could expect.

In reviewing the following analysis, one must keep in mind that we are able to capture only breaches that are either reported to the DataLoss database or are reported in the media. We suspect that some percent of breaches in the healthcare sector as well as in other sectors of the economy go unreported either because they are not detected or because, in the opinion of the entity, no harm was done. We cannot determine if the ''no harm'' type of unreported breach would meet the harm threshold

in § 164.402 of the interim final rule for a reportable breach. If some or all of such breaches reach the harm threshold for a breach, as defined in the interim final rule, then the analysis understates the cost of the rule to the degree that these breaches are not included in our analysis.

Table 1 shows the costs of the provisions of the interim final rule. We also present the costs required for investigating breaches and the amount of time we anticipate individuals will spend calling the toll-free number. The total cost estimated for the rule is $17 million based on the number of breaches and the number of affected individuals.

TABLE 1—SUMMARY OF COMPLIANCE COST FOR NOTIFYING AFFECTED INDIVIDUALS *

Cost elements	Number of breaches	Number of affected individuals	Cost/breach	Cost/affected individuals	Cost
E-mail and 1st Class Mail	106	2,888,804	$12,986	$0.477	1,376,528
Alternative Notices Media Notice	70	2,888,804	487	0.012	34,080
Toll-Free Number	70	2,888,804	117,676	2.851	8,237,309
Imputed cost to affected individuals	70	2,888,804	103,172	2.500	7,222,010
Notice to Media Breach 500+	56	2,887,032	75	0.001	4,200
Report to the Secretary	56	2,887,032	75	0.001	4,200
Investigation Costs:					
Under 500	50	1,772	400	11	20,000
Over 500	56	2,887,032	2,211	0.043	123,800
Annual Report to the Secretary	106	2,888,804	30	0.001	3,180
TOTAL COST			160,616	5.89	17,025,306

* Source: *http://www.datalossdb.org.*

Our cost impact for HIPAA covered entities of approximately $17 million is approximately 350 percent of the FTC cost estimate for non-HIPAA covered entities. The FTC estimate was based on requiring toll-free lines for six months. Their final rule requires toll-free lines for only three months, as does this rule. This should reduce the FTC estimated costs by approximately half to about $5 million; about 30 percent of our cost estimate for HIPAA covered entities of $17 million.

Benefits: Notifying individuals of a breach of their personal health information as close in time to the breach can benefit the individuals directly affected, as well as other entities such as credit card companies and credit agencies. We found little information showing the monetary benefits of medical data notification, but one study [14] presents evidence to show that the sooner affected individuals learn of their personal financial information being compromised, the lower the risk of financial loss to the individual.

We did not find any information regarding the benefits of notification of breached medical information. However, early notification of the breach of sensitive medical information may help an affected individual mitigate the embarrassment that exposure of sensitive medical information may cause. Notification may permit an individual to intervene sooner rather than later to forestall the harmful effects of damaging information. As suggested above, perhaps the greatest benefit of improved data security accrues to the HIPAA entity. We believe the cost of notifying affected individuals and loss of business that may result from a breach of protected health information provide strong incentives for the entity to improve its data security so as to prevent future breaches.

2. Costs

In this analysis we rely entirely on historical data from 2008 for estimating the costs of the interim final rule. We could have attempted to project future costs but two factors argued against such an effort. First, the DataLossdb dataset provides only four years of reasonably good data going back to 2005. Although, in theory, we could use the four data points to establish a trend, it is not clear whether the trend presented for the four years represents a trend in the number of breaches reported, or a trend in the reporting of breaches. In the first instance, the growth in data breaches would be the result of a real growth in the number of breaches. If this were the case, we would have confidence that the data represented a real trend. In the latter case, however, the growth in the number of breaches may simply reflect a growth in the reporting of breaches rather than an actual growth in the number of breaches. Under these circumstances, projecting a future trend would lead us to erroneous conclusions. More likely, the changes we see from year to year are a combination of both phenomena, which still leaves us with the problem of discerning the real change in breaches from the growth in reporting breaches. Therefore, we decided to base our estimates on the latest and most complete year of data available.

The second factor is the Department's implementation of the ARRA provisions regarding health information and privacy. Implementation of incentive payments to health care providers and the issuance of health IT standards provided in the ARRA are likely to stimulate adoption of health IT systems; and with growth in IT adoption, one may expect the number of data breaches of protected health information to increase.

At the same time, the Department is taking steps to ensure greater protection of protected health information, for example, by promulgating this interim final rule along with the encryption guidance that the Department issued on April 17, 2009. In the event that protected health information is compromised, affected individuals will be notified of breaches.

As a result of the efforts to both stimulate growth in the adoption of health IT (and the implications that has for increased risk of data breaches) and the countervailing efforts to reduce the incidences of breaches by encrypting records, we believe that at the present time there is no reasonable way to forecast the net effects of both the change in costs or number of breaches that are likely to occur. Nevertheless, to the extent that the rate of adoption of encryption technology out paces health IT adoption, we can predict fewer

[14] ''Toward a Rational Personal Data Breach Notification Regime,'' by Michael Turner: Information Policy Institute, June, 2006.

reportable breaches under this rule. Given the state of flux, however, we believe the most prudent analysis is to simply rely on the historical data at hand.

a. Affected Entities

Section 13402 of the Act applies to HIPAA covered entities that are health care providers, health plans, or clearinghouses and their business associates that access, maintain, retain, modify, record, store, destroy, or otherwise hold, use, or disclose unsecured protected health information. Based on 2006 data from the Office of Advocacy, Small Business Administration there are 605,845 health care entities, 4,567 health insurance plans and third party administrators. The Centers for Medicare & Medicaid Services report 107,567 durable medical equipment and prosthetic suppliers, and the National Association of Chain Drug Stores reports 88,396 pharmacies. In addition, we estimate that each covered entity has contractual arrangements with three business associates as defined under our regulations at 45 CFR 160.103. It should be noted, however, that many of the same business associates contract or have arrangements with many different HIPAA covered entities. To the extent that this occurs, the total number of business associates will be overstated. Since we do not know the extent of duplication among business associates, we cannot estimate the number of business associates affected by this rule. However, we can estimate that approximately 0.9 million HIPAA covered entities will be subject to the interim final rule. Table 2 presents the number of HIPAA covered entities. However, as noted, only the number of HIPAA covered entities is well established. It is possible the number of affected business associates could be small if a few firms contracted with many HIPAA entities. In any event, we need not speculate about this relationship as our cost estimate is not based on the number of affected entities. Instead, it is based on a unique database of breaches and affected individuals as described below.

TABLE 2—NUMBER OF HIPAA COVERED ENTITIES BY NAICS CODE [1]

NAICS code	Providers/suppliers	Number of entities
622	Hospitals (General Medical and Surgical, Psychiatric and Drug and Alcohol Treatment, Other Specialty)	4,060
623	Nursing Facilities (Nursing care facilities, Residential mental retardation, mental health and substance abuse facilities, Residential mental retardation facilities, Residential mental health and substance abuse facilities, Community care facilities for the elderly, Continuing care retirement communities).	34,400
6211–6213	Offices of MDs (DOs, Mental health, Dentists, Practitioners, PT, OT, ST, Audiologists)	419,286
6214	Outpatient Care Centers (Family Planning Centers, Outpatient Mental Health and Drug Abuse Centers, Other Outpatient Health Centers, HMO Medical Centers, Kidney Dialysis Centers, Freestanding Ambulatory Surgical and Emergency Centers, All Other Outpatient Care Centers).	13,962
6215	Medical Diagnostic, and Imaging Services	7,879
6216	Home Health Services	15,329
6219	Other Ambulatory Care Services (Ambulance and Other)	5,879
n/a	Durable Medical Equipment Supliers [2]	107,567
4611	Pharmacies [3]	88,396
524114	Heath Insurance Carriers	1,045
524292	Third Party Administrators	3,522

[1] Office of Advocacy, Small Business Administration *http://www.sba.gov/advo/research/data.html.*
[2] Centers for Medicare and Medicaid Services.
[3] The Chain Pharmacy Industry *http://www.nacds.org/wmspage.cfm?parm1=507.*

Healthcare clearinghouses are also considered covered entities. In the final rule implementing the 5010 standard published in the **Federal Register** on January 16, 2009 (74 FR 3318), we estimated that 162 clearinghouses will be affected by the interim final rule.

b. How Many Breaches Will Require Notification?

(1) What Is a Breach of Protected Health Information?

The interim final rule at § 164.402 defines a breach as an event that ''compromises the security or privacy of the protected health information,'' which means that it poses a significant risk of financial, reputational, or other harm to the individual. Events such as hacking into a database to steal protected health information would clearly constitute a breach of protected health information. Other events, however, such as a hospital inadvertently posting protected health information on a Web site, or the office staff mailing a medical report to the wrong patient, may constitute a breach. In the case of posting information on a facility's Web site or mailing the wrong report, the entity responsible for the inappropriate release of protected health information may not have to notify the affected person if the entity has determined (e.g., by performing a risk assessment) that the release of the protected health information will not result in financial, reputational, or other harm to the individual. For example, if a general hospital impermissibly posted protected health information on its Web site that included only an individual's name and address, under paragraph (1) of the definition of ''breach'' at § 164.402(1), the facility may not have to notify affected individuals if it determines that only minimal or no harm could result from such an inadvertent posting. However, if the same information were posted on the Web site of a drug rehabilitation facility, a reasonable person may conclude that the association of a person's name with the facility could cause damage to their reputation. In that case, the provider would be required to notify the affected individuals. Therefore, a covered entity may not assume that these types of breaches do not require notices to the affected individuals. The entity must undertake an analysis of the information that was improperly divulged and only after an investigation may it conclude that the information released poses no significant harm.

Contrasted with an event that clearly falls into the category of a data breach and, after investigation requires notice to affected individuals, paragraph (2) of the definition of ''breach'' at § 164.402 specifies three types of improper uses and disclosures of protected health information that are excluded from the definition of a breach. The first is unintentional access to protected health

information in good faith in the course of performing one's job, and such access does not result in further impermissible use or disclosure. For example, a staff person receives and opens an e-mail from a nurse containing protected health information about a patient that the nurse mistakenly sent to the staff person, realizes the e-mail is misdirected and then deletes it.

The second exclusion is an inadvertent disclosure of protected health information by a person authorized to access protected health information at a covered entity or business associate to another person authorized to access protected health information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates. For example, a nurse calls a doctor who provides medical information on a patient in response to the inquiry. It turns out the information was for the wrong patient. Such an event would not be considered a breach under paragraph (2)(ii) of the definition of ''breach'' at § 164.402, provided the information received was not further used or disclosed in a manner not permitted by the Privacy Rule.

The third type of improper disclosure that is excluded from the definition of a ''breach'' is when protected health information is improperly disclosed, but the covered entity or business associate believes, in good faith, that the recipient of the unauthorized information would not be able to retain the information. For example, a nurse hands a patient a medical report, but quickly realizes that it was someone else's report and requests the return of the incorrect report. In this case, if the nurse can reasonably conclude that the patient could not have read or otherwise retained the information, then providing the patient report to the wrong patient does not constitute a breach.

(2) How Many Breaches Occur and How Many Individuals Are Affected?

The sources for identifying the number of HIPAA covered entity breaches and the number of individuals are limited to State health agencies and one database maintained by a nonprofit organization. There is no national registry of data breaches that captures all data breaches. Thus, we have to rely on the few sources available to us and accept that each source has specific limitations. Essentially, we examined three sources and methods for estimating the number of breaches and then attempted to apply them to the universe of HIPAA covered entities and their business associates.

On April 20, 2009, the FTC published a proposed rule that would implement section 13407 of ARRA (74 FR 17914) and that applies to entities that are not HIPAA covered entities but which may retain, accept, and process personal health information in the form of personal health records. Examples of the kind of entities to which the FTC rule applies are web-based organizations that will receive, store, and maintain an individual's health information for that individual. The FTC estimated there are 900 such entities.

To arrive at an estimate of the number of breaches per year that would occur to personal health records that these entities retain, the FTC examined a general database of breaches from 2002 to 2007. They identified 246 breaches occurring within the 5-year period for businesses. Averaging the number of breaches over the 5-year period equals 50 breaches per year. FTC next identified 418,713 retail businesses with revenues of $1 million or more per year. However, concerned that applying the annual number of breaches to so large a number would yield an unrealistically small number of breaches per entity, the FTC took one percent of the number of retail businesses (which equals 4,187 entities) on the assumption that only one percent of the industry had such weak security that they would be attractive targets for data breaches. The FTC then calculated the breach rate based on the smaller number. The resulting rate is 1.2 percent which when applied to the 900 entities the FTC identified as maintainers of personal health records, equals 11 breaches per year.

To estimate the number of affected individuals, the FTC used a survey by the Ponemon Institute, ''National Survey on Data Security Breach Notification,'' 2005 to derive a percent of the number of individuals notified as a result of a breach. Using 11.6 percent and applying the value to an estimated 2 million individuals using the services of the 900 personal health record holders, the FTC estimated that 232,000 individuals will be notified each year of data breaches. We believe this methodology has little applicability to the HIPAA universe of covered entities.

We do not believe these estimates are appropriate for the purposes of this rule for several reasons. First, the HIPAA covered universe contains many more, but also much smaller, entities than the FTC web-based universe. Second, this rule exempts many small breaches from reporting requirements because they either fall under the exceptions to the definition of ''breach'' in the regulation or the entity determines that no harm will occur. Third, although we use historical data for our impact estimates, it is possible that the provisions of this rule that exempt from the notification requirements data encrypted pursuant to the Secretary's guidance may greatly reduce the future number of reportable breaches; and fourth, as the FTC itself states, their costs are over-estimated because they apply all cost factors to all estimated web-based breaches.

Because the interim final regulation specifies different levels of responses on the part of HIPAA covered entities when unsecured protected health information is breached, we had to determine the number of breaches occurring using the size categories contained in our interim final regulation. The regulation requires increasing levels of notification for breaches that affect fewer than ten individuals, 10 to 499 individuals and for breaches affecting more than 500 individuals.

Rather than follow the approach the FTC adopted we turned to the DataLoss database maintained by the Open Security Foundation at *http://datalossdb.org/*. The database identifies data breaches by type of business and the number of records or individuals affected. Because business associates also must comply with provisions of the interim final rule in addition to HIPAA covered entities, we looked at all entries that either were identified as a medical entity or identified medical information as being involved in the data breach. Table 3 is a summary of the findings from the database for the year 2008, categorized by the number of individuals affected by each breach. We chose 2008 because it is the latest year for which we have a full year of data.

TABLE 3—NUMBER OF BREACHES BY NUMBER OF AFFECTED FOR 2008

Affected size	Data	Year 2008
Unknown	Breaches	36
	Affected Individuals	

TABLE 3—NUMBER OF BREACHES BY NUMBER OF AFFECTED FOR 2008—Continued

Affected size	Data	Year 2008
10 to 499	Breaches	14
	Affected Individuals	1,772
500 or More*	Breaches	56
	Affected Individuals	2,887,032
Total Number of Breaches		107
Total Sum of Total Affected		2,888,804

* Data for 2008 is adjusted to remove one outlier breach of 2.2 million records.

As Table 3 demonstrates, the number of breaches and the number affected individuals are substantially smaller than the numbers we would generate using the FTC approach: 2.9 million affected individuals and 106 breaches. There are nevertheless, shortcomings associated with the data displayed in the table. As discussed previously, the meaning of ''Total Affected'' is not clear. Without examining each table data entry, it is impossible to know precisely if the numbers in the cells represent individuals, records, or both. In looking at a small sample of the descriptive detail for actual database entries, we found evidence for both individuals and records. We assume that in the cases where the number of records breached was reported, that the number corresponds roughly to the number of individuals—that each record represents an individual. Yet, because an individual may have more than one record in data that was improperly accessed, our estimate of the affected number of individuals may be overstated. We invite public comment on this point.

Another concern we have is the table does not show any affected individuals or records for the ''under ten'' grouping. Because ''Unknown'' in the database is blank, the default value is zero. However, it would be improper to assume that the actual value of the reported ''Total Affected'' was zero. There is evidence, on the other hand, that the ''Total Affected'' in this group is less than 500 based on information we were able to obtain from the California Department of Public Health. For the first six months of this year (the first year that California's law requiring notification of data breaches involving protected health information went into effect), of the 196 cases that have been examined to date, none of the cases has involved more than 499 affected individuals. We interpret this fact as pointing to the likelihood that the number of individuals or records affected where the number is unknown is likely to be less than 500 and a majority of cases may fall into the under ten category. Because of the gap in the data for breaches involving fewer than ten individuals, our estimate for this group may be understated. We invite public comment on this point.

The third limitation is the way information finds its way into the database. Since the database is privately maintained and operated and is not responsible to either a state or federal agency for regulating its content, the completeness and accuracy of information posted on the Web site is unknown. Generally, the information posted on the Web site is gleaned from published sources or individuals with knowledge of the breaches submitting information. Nevertheless, we cannot be completely confident in the reliability of the information obtained from this source. Therefore, as is evident from the lack of affected records or individuals in the ''under ten'' grouping, it is highly likely that a certain number of breaches never reach the database, thus resulting in an undercount of the total number of breaches and the total number of individuals or records affected. We invite public comment on this point.

(3) Estimating the Costs

(a) Baseline

Approximately 45 States have laws that to varying degrees contain breach notification provisions similar to the Act. These 45 States require notification of individuals whose information was in some manner compromised as a result of inappropriate access to their information. Several States also link their requirements to federal notification requirements. Thus while all the States with breach laws require some form of notification to affected individuals, those States whose laws conform to the Federal requirements need only develop procedures to conform to their State laws in addition to the interim final rule. The entities in those States, thus, will have a small compliance burden compared to the entities in other states.

Because not all states have a notification requirement, in our estimation of the costs of the interim final rule, we will assume that no State has a notification requirement. Yet, clearly this would significantly overstate the burden imposed on HIPAA covered entities because HIPAA covered entities have trained their staffs and have prepared procedures to follow when a breach occurs to comply with existing requirements of most of the states. To ameliorate the overstatement of our cost estimate somewhat, we will assume the costs for training personnel and for developing procedures have already been expended and are therefore in the baseline and we did not estimate these costs in our analysis. We invite public comment on these assumptions.

(b) Estimation of Costs

In its notice of proposed rulemaking, the FTC identified the cost elements that an entity will encounter when complying with the interim final rule. We examine the cost of notifying affected individuals by first class mail, issuing a substitute notice in major media or on a Web site along with a toll-free phone number, notifying prominent media in the event of a breach involving 500 or more individuals, and notifying the Secretary of a breach, as well as the costs of investigating breaches.

Cost of Notifying Affected Individuals by First Class Mail or E-Mail

Section 164.404 requires all covered entities to notify an individual whose unsecured protected health information is believed to have been breached as defined in the interim final rule, either by first class mail, or if the individual has agreed, by e-mail. In its analysis, the FTC assumed that 90 percent of the notices to affected individuals will be e-mailed and only 10 percent will be sent by regular first class mail. Since the firms that the FTC is addressing are primarily web-based, assuming that the vast majority of communications would be conducted through e-mail is a reasonable assumption. For HIPAA covered entities, 90 percent of which are small businesses or nonprofit organizations, that engage the entire U.S. population in providing health care

services, we believe that notification through e-mail will be much more limited than in the case of the entities the FTC regulates. Most physicians appear concerned with the lack of confidentiality associated with e-mail use, and many older patients may be uncomfortable with and/or do not have access to e-mail. We, therefore, assume that only 50 percent of individuals affected as a result of a breach of unsecured protected health information will receive e-mail notices.

There will be certain costs that both e-mail and first-class mail communication will share. The cost of preparing the notice and preparing a draft will apply to both forms. The median hourly wage for a healthcare practitioner and technical worker in 2008 was $27.[15] Doubling the amount to account for fringe benefits equals $54. If we assume 30 minutes per breach for composing the letter, the cost equals $27. We assume that it will take 30 minutes per breach for an administrative assistant to draft the letter in either e-mail or printed formats and to document the letter to comply with §§ 164.414(a) and 164.530(j). The median hourly wage for office and administrative support staff is $14.32 per hour. Accounting for benefits, the hourly costs is $29. For the 30 minutes, we estimate $15 per breach. The combined cost for composing and preparing the document is approximately $42 per breach. Half of the cost will be allocated to the mailing of the first-class letter and the other half to the sending of e-mails.

Although computer costs for sending e-mail will be insignificant, it will take staff time to select the e-mail address from the entity's mailing list. We assume that a staff person could process and send 200 e-mails per hour at a cost of $30 per hour. For each mailed notice we assume $0.06 for paper and envelope and $0.44 for a first class stamp, totaling $0.50 per letter. We estimate another $30 per hour to prepare the mailing by hand at a rate of 100 letters per hour.

Using the data from Table 3 above for 2008 (the latest year for which we have a complete year of data), there were a total of 106 breach events reported including those of an unknown number of affected records or individuals. Multiplying the number of breaches by the cost of composing and drafting a notice (106 × $42) equals $4,346. Allocating half the costs to e-mailing and the same amount to regular mail yields $2,173 to each category.

For 2008, there were 2,888,804 reported affected individuals. Splitting this number evenly between e-mail and regular mail gives us 1,444,402 affected individuals for each notice category. For e-mails we divide affected individuals by the number of addressed envelopes processed in an hour (200) and multiply by the hourly cost of $30. To this number we add the $2,173 giving us an estimated cost for e-mail notices of $218,833.

We follow the same method for estimating the cost of mailing notices using postal mail plus the cost of postage and supplies. Dividing 100 letters per hour into 1,444,402 yields 14,444 hours which is then multiplied by $30 plus postage and supplies of plus the costs of composing and drafting equals $ 1,157,695. Summing the cost of e-mail and postal mail notices equals $1,376,528. Table 4 presents the results of our analysis. We invite public comment on this analysis and our assumptions.

TABLE 4—COST OF E-MAIL AND FIRST CLASS MAIL TO AFFECTED INDIVIDUALS

	Composing and drafting	Breaches	Composing and drafting costs	Affected individuals or records	Hours to prepare mailing	Cost to prepare mailing	Postage and supplies	Total
Mail	21	106	$2,173	1,444,402	14,444	$433,321	$722,201	$1,157,695
E-mail	21	106	2,173	1,444,402	7,222	216,660	.....	218,833
Total	.....	.....	4,346	2,888,804	.....	.....	.....	1,376,528

Cost of Substitute Notice

In the event that a HIPAA covered entity is not able to contact an affected individual through e-mail or postal mail, it must attempt to contact the person through some other means. If the number of individuals who cannot be reached through the mailings is less than ten, the entity may attempt to reach them by some other written means, or by telephone. We do not know how many breaches occurred with fewer than ten affected individuals and therefore cannot estimate a cost for contacting them. We believe, however, that the costs would be very small and as a result we have not attempted to estimate the costs of contacting them.

In the event that the covered entity is unable to contact 10 or more affected individuals through e-mail or postal mail, the interim final rule requires the entity to (1) publish a notice in the media (newspaper, television, or radio) containing the information contained in the mailed notice or post a notice on its Web site, and (2) set up a toll-free number. The toll-free number is to be included in the public notice and Web site.

Based on the cost for publishing a public notice in the two leading newspapers, in the Washington, DC area, rates range between $2.91 and $15.23 per line. Based on these numbers, we estimate the cost of a public notice will cost between $80 and $400. Taking the mean of the range, we estimate an average price of $240 per notice. If we assume that a provider will publish two notices, the cost will be $480. Multiplying this amount by the number of breaches reported in 2008 for the 10 to 499 and 500 or more groupings (70), yields $33,600.

It is conceivable that some breaches involving more than 10 but fewer than 500 individuals may require notices in several states or jurisdictions. The probability of this event occurring, however, we believe, is low and we did not attempt to estimate the costs of such an event.

If a HIPAA covered entity has a Web site, we assume there will be no cost to post the notice to the Web site.

The cost of setting up a toll-free phone number is a straight forward process of contacting any one of a number of service providers who offer toll-free service. In checking the internet, we found prices for toll-free service ranging from $0.027 per minute for a basic mail box arrangement to $0.07 per minute. Some require a

[15] Department of Labor, Occupational Employment Statistics; Healthcare Practitioner and Technical Occupations. *http://www.bls.gov/oes/.*

monthly fee ranging from $10 to $15 per month. A major, national phone service company offers toll-free service for $15 per month per toll-free number and per minute charge of $0.07. There is a one-time charge of $15. For purposes of our analysis, we will use the costs of $15 per month plus $15 activation fee and $0.07 per minute.

Since the regulation requires providers to maintain a toll-free number for three months, the monthly charge plus initial fee per breach will be $60. To estimate the number of calls to the toll-free number we assumed that more individuals than those who did not receive a notice or who are not affected by the breach would call out of concern that their protected health information might have been compromised. The calls from individuals who are not affected will make up for the affected individuals who will not call the number either because they did not learn of the breach or are not concerned.

In its proposed rule, the FTC estimated that 5,000 people would call within the first month and then decline to an average of 1,000 calls per month. Since most HIPAA covered entities do not serve that many patients, we decided to use the mean number of affected individuals for each of the two groups, 10–499 and 500 or more affected individuals. For breaches with 10–499 affected individuals, the mean is 127 and for 500 or more, the mean equals 51,554 individuals. Since multiplying the mean times the number of breaches equals the total number of affected individuals, we assume that breaches affecting between 10 and 500 individuals will generate 1,772 calls. Similarly, for breaches affecting 500 or more individuals, we assume 2,887,032 calls. Assuming that a call averages five minutes at $0.07 per minute, we estimate the total cost for all calls to equal $1,011,084. Added to this is $4,200 that represents the monthly fee per breach (70 breaches) for three months plus the one-time fee (totaling $60 per breach). This brings the total cost of toll-free lines to $1,015,284.

To this cost, we must also include the office staff time to answer the incoming calls at $30 per hour. Based on an average of five minutes per call, a staff person could handle 12 calls per hour. Dividing 12 into 2,888,804 equals 240,734 hours and then multiplied by $30 equals $7,222,025. Summing all cost elements yields a total cost of $8,237,309.

To the degree that firms already maintain toll-free phone lines, our estimate overstates the costs of setting up a toll-free line as required under the rule. Table 5 presents our cost analysis.

TABLE 5—COST FOR SETTING UP A TOLL-FREE LINE FOR THREE MONTHS

Costs	Number of breaches 11–499 (14)	Number of breaches 500 + (56)	Number of call 11–499 (1772)	Number of call 500 + (2,887,032)	Total
Monthly Charges for 3 months + 1-time Charge ($60/breach)	$840	$3,360	.....	.....	$4,200
Direct Calling Charges @ $.07/min × 5 minutes	.....	.....	622	1,010,461	1,011,084
Labor cost @ $30/hr × 5 min per call	.....	.....	4,445	7,217,580	7,222,025
Total	840	3,360	5,067	8,228,041	8,237,309

In addition to the cost of the toll-free number and staff time answering calls, we also imputed a cost to the time individuals will spend calling the toll-free number. In estimating the time involved, we assumed that a person will spend five minutes per call. However, the person may not get through the first time and thus may have to call back a second time which could add another 5 minutes. Taking the average between 5 and 10 minutes, we used an average call time of 7.5 minutes.

For purposes of imputing cost to an individual's time, we took the mean compensation amount from the Bureau of Labor Statistics of $20.32 for all occupations at *http://www.bls.gov/oes/current/oes_nat.htm.* Dividing 60 by 7.5 minutes yields 8 calls per hour. Dividing the number of calls per hour into 2,888,804 calls and then multiplying by $20, gives us a cost of $7,222,010. We invite the public to comment on our analysis and assumptions.

Cost of Breaches Involving 500 or More Individuals

If a covered HIPAA entity experiences a data breach of protected health information affecting 500 or more individuals, § 164.406 of the interim final rule requires the entity to notify the media in the jurisdiction or State in which 500 or more individuals reside. Also, § 164.408 requires the entity to submit a report to the Secretary at the same time it notifies the media. The covered entity must take these steps in addition to undertaking efforts to directly notify affected individuals by first-class mail or e-mail and through alternative means of notification if it cannot contact 10 or more individuals.

We anticipate that, when a covered entity must notify the media under the interim final rule, it will issue a press release. The tasks involved in issuing the press release will be the drafting of the statement and clearing it through the organization. We assume that drafting a one-page statement will contain essentially the same information provided in the notice to affected individuals and will take 1 hour of an equivalent to a GS–12 Federal employee, earning $29 per hour. Multiplying the amount by two to account for benefits equals $58. Approval of the release involves reading the document. We expect this activity to take 15 minutes. The average hourly rate for a public relations manager is approximately $49 in 2008. Doubling the amount for benefits equals $98. Rounding up to $100, one quarter of an hour equals $25 for approving the release. The total cost of the release equals $75, and multiplying this amount by the number of breaches affecting 500 or more individuals (56) equals $4,200. It should be noted that this amount may overstate the actual costs of issuing a notice to the media. The regulation requires a release only in the jurisdiction or State where 500 or more individuals are affected. As the example in the discussion of § 164.406 discussed above in Section IV illustrates, a breach may affect a total of 500 or more individuals but may affect fewer than 500 persons in each State or jurisdiction where the affected individuals reside. In that case, the covered entity does not have to issue a notice to the media, but must take all the other steps required of a breach of that size.

There is the possibility that a breach may affect 500 or more individuals in several States or jurisdictions. In such situations, the covered entity has the choice of notifying the media in each of

the several States or jurisdictions; or it may choose to notify the national media with the expectation that the local media in each jurisdiction will pick up the information. We expect the covered entity to select the most efficient means for informing the media.

The report to the Secretary of HHS that must be sent contemporaneously to the sending of the notices to the affected individuals will contain essentially the same information as the notice sent to the affected individuals: (a) Information regarding the nature and cause of the data breach, (b) the number and contents of the records breached, (c) the number of individuals affected, (d) steps the entity took to notify affected individuals and the degree of success it had in reaching affected individuals, and (e) steps taken to improve data security.

We anticipate the time and cost to prepare the report will be the same as that required for issuing a notice to the media. The cost for reporting the 56 breaches affecting 500 or more individuals based on the 2008 data is $4,200.

Cost of Investigating a Breach

As a prerequisite to issuing a notice to individuals or to the media and the report to the Secretary when a breach occurs, the covered entity will need to conduct some form of investigation to determine the nature and cause of the breach. We anticipate that most breaches involving fewer than 500 records or individuals will be relatively easy to investigate and may involve a day of investigation to determine the cause and the extent of the breach. An office manager's time at $50 per hour multiplied by 8 hours equals $400 and multiplied by the number of breaches affecting fewer than 500 individuals is $20,000. We note that this estimate includes the time required to produce the documentation required by § 164.414(a).

For breaches involving 500 or more individuals, the breach investigation may take considerably longer and involve significantly greater costs. The FTC, in its proposed rule (74 FR 17921 and footnote 27) estimated 100 hours at a cost of $4,652. We accept this cost for investigating a breach as an upper bound, but we expect that the average investigation will take half the time and cost approximately $2,300. Based on the Ponemon report cited above, the most frequent cause for data breaches was a lost laptop computer accounting for 35 percent of all data breaches. While system failure was the second most frequently cited cause of data breaches accounting for 33 percent, the combined loss of laptops and other data bearing equipment accounted for almost 50 percent of data losses. For these reasons, we believe that estimating the average time and cost for breach investigation as being half the amount FTC estimated is a reasonable assumption. Multiplying our cost estimate by the number of breaches of 500 or more individuals protected health information yields us $128,800.

Cost of Submitting the Annual Breach Summary to HHS

Under § 464.408, covered entities must maintain a log of all breach events. Once per year a covered entity that has experienced a breach must submit a summary of its log to the Department. Since the material for the submission has already been gathered and organized for the issuance of the notices to the affected individuals, we expect submitting the log summary to the Department will require at most an hour of office staff time once per year. At $30 per hour multiplied by the total number of breaches reported for 2008 (106) equals $3,180.

3. Benefits

We were not able to identify any studies that pointed to quantitative benefits arising from the notification of health data breaches. On an intuitive level, however, it seems that notifying affected individuals of compromises to their protected health information would help in two ways. It would alert them to the possibility of identity theft resulting from the exposure of identifiers such as credit card numbers, date of birth, and social security numbers associated with the individual's name. The other benefit of notification is enabling an affected individual to mitigate harm to his or her personal reputation that may result from the exposure of sensitive medical information.

With respect to the mitigation of financial loss, in the study cited previously [16] Turner presents evidence suggesting that 69 percent of individuals who were able to take action within 6 months of the breach to their financial information to mitigate damages suffered no out-of-pocket expenses. This compares to 40 percent who took action after 6 months. In cases where affected individuals who were able to take action within 5 months of the breach such as monitor their credit card statement and notify credit bureaus, the value of the fraud exceeded $5,000 only in 11 percent of the cases. For those who did not take steps to mitigate the damage for 6 months or longer, the amount of fraud exceeded $5,000 in 44 percent of the cases. From this evidence, it appears that there are some tangible benefits to notifying individuals as soon as possible after a breach of protected health information occurs. We did not, however, find a clear connection between the breach of protected health information and the amount of financial loss or its frequency.

The harm to a person's reputation or standing in the community resulting from the release of protected health information could be substantial and could have financial and economic consequences. We lack data on the frequency and extent of damages from the inappropriate release of sensitive medical information. Notifying a person of unauthorized access can, however, enable a person to take measures to reduce the damage. Notification can enable them to prepare psychologically and take actions to prepare for the consequences. The individual also may take steps to prepare others for the possible consequences.

Benefits to the HIPAA covered entity will rest with the actions it takes to prevent data breaches. As our analysis demonstrates, the costs of notification for an entity may be significant, although in the aggregate in terms of overall health care costs, they are extremely small. Nevertheless, we believe that the costs of the interim final rule are avoidable if either before a covered entity experiences a breach or following one, the entity adopts measures to strengthen its data security. As pointed out, the most frequent form of data loss is the result of lost or stolen laptops and data bearing media such as hard drives. If the data on these devices is encrypted, then under the interim final rule definition of a breach, the event would not require the covered entity or the business associate to notify affected individuals.

Because much of the harm resulting from breaches of protected health information may come from the pain and suffering individuals' may sustain to their reputations and standing in their communities, the benefits that reductions in the number of breaches and number of individuals affected is hard to quantify while the costs of the rule are identifiable and specific. For these reasons, we are unable to estimate the net benefits of the rule. Yet we believe by providing an incentive to reduce the number of breaches of unsecured protected health information, the rule will help increase confidence among members of the public in the

[16] ''Towards A Rational Breach Notification Regime'' by Michael Turner; Information Policy Institute.

security of their protected health information. To whatever extent greater trust can be fostered between patients and health care providers, the better the communication and the higher the quality of health care delivered.

D. Regulatory Flexibility Analysis

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. We are implementing this interim final rule as required by section 13402 of Public Law 111–5. The objective of the rule is to establish uniform requirements for HIPAA covered entities and their business associates to notify individuals whose unsecured protected health information may have been improperly accessed or used.

In Table 2 above, we identified the type and number of HIPAA covered entities to which the interim regulation applies. For purposes of our regulatory flexibility analysis, it is our practice to assume that all health care providers and suppliers meet the definition of a small entity. Ninety percent of small entities either meet the Small Business Administration size standard for a small business or are nonprofit organizations. Approximately 71 percent of health insurance carriers and third party administrators meet the SBA's small business size standard. Although we do not have separate revenue data for health insurance carriers and third party administrators, we believe that the majority of the third party administrators meet the SBA standard. Approximately 22 percent of pharmacies meet the SBA standard for a small business.

Based on the analysis of data breaches for 2008, we do not expect the interim final rule to have a significant impact on a substantial number of small entities. We estimate that the average cost per breach will cost $160.616. Second, the rule will apply to entities that, in many instances, already have obligations to provide notification of data breaches under most State laws covering medical breaches. Therefore, the Secretary certifies that the rule will not have a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act Information Collection

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 information collection request for public comment.

Because this rule will go into effect 30 days following publication, we have submitted a request to OMB for review of these information collection requirements on an emergency basis, pursuant to 5 CFR 1320.13. We are providing an abbreviated comment period of 14 days. Interested persons are invited to send comments by September 8, 2009 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 comment on this collection of information or to obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your comment or request, including your address and phone number to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 14 days.

Abstract: The Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5) requires the Office for Civil Rights to collect information regarding breaches discovered by covered entities and their business associates. ARRA was enacted on February 17, 2009. The HITECH Act (the Act) at section 13402 requires the Department of Health and Human Services (HHS) to issue interim final regulations within 180 days of enactment to require HIPAA covered entities and their business associates to notify affected individuals and the Secretary of breaches of unsecured protected health information. Section 164.404 of this interim final regulation requires HIPAA covered entities to notify affected individuals of a breach of their unsecured protected health information without reasonable delay and in any case within 60 days of discovery of the breach, and, in some cases, to notify the media of such breaches pursuant to § 164.406. Section 164.408 requires covered entities to provide the Secretary with immediate notice of all breaches of unsecured protected health information involving more than 500 individuals. Additionally, the Act requires covered entities to provide the Secretary with an annual log of all breaches of unsecured protected health information that involve less than 500 individuals. Finally, covered entities must maintain appropriate documentation under § 164.530(j) to comply with their burden of proof under § 164.414.

The estimated annualized burden table below was developed using the same estimates and workload assumptions in the impact statement in section V, above.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Average number of responses per respondent	Average burden hours per response	Total burden hours
Individual Notice—Written and E-mail Notice (investigation; drafting, preparing, and documenting notification; and sending notification)	106	27,253	1/60	48,147
Individual Notice—Substitute Notice (posting or publishing notice and toll-free number)	70	1	668	46,760
Media Notice	56	1	1	56
Notice to Secretary (Notice for breaches affecting 500 or more individuals and annual notice)	106	1	22/60	39
Total				95,002

List of Subjects

45 CFR Part 160

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Investigations, Medicaid, Medical research, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements, Security.

45 CFR Part 164

Administrative practice and procedure, Computer technology, Electronic information system, Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Hospitals, Medicaid, Medical research, Medicare, Privacy, Reporting and recordkeeping requirements, Security.

■ For the reasons set forth in the preamble, the Department proposes to revise 45 CFR subtitle A, subchapter C, parts 160 and 164, as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

■ 1. The authority citation for part 160 is revised to read as follows:

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 1320d–1320d–8; sec. 264, Public Law 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)); 5 U.S.C. 552; and secs. 13400 and 13402, Public Law 111–5, 123 Stat. 258–263.

■ 2. Revise § 160.101 to read as follows:

§ 160.101 Statutory basis and purpose.

The requirements of this subchapter implement sections 1171 through 1179 of the Social Security Act (the Act), as added by section 262 of Public Law 104–191, section 264 of Public Law 104–191, and section 13402 of Public Law 111–5.

■ 3. In § 160.202, revise the second paragraph of the definition ''Contrary'' to read as follows:

§ 160.202 Definitions.

* * * * *

Contrary * * *

(2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of part C of title XI of the Act, section 264 of Public Law 104–191, or section 13402 of Public Law 111–5, as applicable.

* * * * *

■ 4. In § 160.534 add paragraph (b)(1)(iv), and revise (b)(2) to read as follows:

§ 160.534 The hearing.

* * * * *

(b)(1) * * *

(iv) Compliance with subpart D of part 164, as provided under § 164.414(b).

(2) The Secretary has the burden of going forward and the burden of persuasion with respect to all other issues, including issues of liability other than with respect to subpart D of part 164, and the existence of any factors considered aggravating factors in determining the amount of the proposed penalty.

* * * * *

PART 164—SECURITY AND PRIVACY

■ 5. The authority citation for part 164 is revised to read as follows:

Authority: 42 U.S.C. 1320d–1320d–8; sec. 264, Public Law 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320–2 (note)); secs. 13400 and 13402, Public Law 111–5, 123 Stat. 258–263.

■ 6. Revise § 164.102 to read as follows:

§ 164.102 Statutory basis.

The provisions of this part are adopted pursuant to the Secretary's authority to prescribe standards, requirements, and implementation specifications under part C of title XI of the Act, section 264 of Public Law 104–191, and section 13402 of Public Law 111–5.

■ 7. In § 164.103, add in alphabetical order the definition of ''Law enforcement official'' to read as follows:

§ 164.103 Definitions.

* * * * *

Law enforcement official means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

(1) Investigate or conduct an official inquiry into a potential violation of law; or

(2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

* * * * *

■ 8. In § 164.304, revise the definition of ''Access'' to read as follows:

§ 164.304 Definitions.

* * * * *

Access means the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource. (This definition applies to ''access'' as used in this subpart, not as used in subparts D or E of this part.)

* * * * *

■ 9. Add a new subpart D to part 164 to read as follows:

Subpart D—Notification in the Case of Breach of Unsecured Protected Health Information

Sec.
164.400 Applicability.
164.402 Definitions.
164.404 Notification to individuals.
164.406 Notification to the media.
164.408 Notification to the Secretary.
164.410 Notification by a business associate.
164.412 Law enforcement delay.
164.414 Administrative requirements and burden of proof.

Authority: Secs. 13400 and 13402, Pub. L. 111–5, 123 Stat. 258–263.

Subpart D—Notification in the Case of Breach of Unsecured Protected Health Information

§ 164.400 Applicability.

The requirements of this subpart shall apply with respect to breaches of protected health information occurring on or after September 23, 2009.

§ 164.402 Definitions.

As used in this subpart, the following terms have the following meanings:

Breach means the acquisition, access, use, or disclosure of protected health information in a manner not permitted under subpart E of this part which compromises the security or privacy of the protected health information.

(1)(i) For purposes of this definition, *compromises the security or privacy of the protected health information* means poses a significant risk of financial, reputational, or other harm to the individual.

(ii) A use or disclosure of protected health information that does not include the identifiers listed at § 164.514(e)(2), date of birth, and zip code does not compromise the security or privacy of the protected health information.

(2) Breach excludes:

(i) Any unintentional acquisition, access, or use of protected health information by a workforce member or person acting under the authority of a covered entity or a business associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under subpart E of this part.

(ii) Any inadvertent disclosure by a person who is authorized to access protected health information at a covered entity or business associate to

another person authorized to access protected health information at the same covered entity or business associate, or organized health care arrangement in which the covered entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under subpart E of this part.

(iii) A disclosure of protected health information where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Unsecured protected health information means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111–5 on the HHS Web site.

§ 164.404 Notification to individuals.

(a) *Standard*—(1) *General rule.* A covered entity shall, following the discovery of a breach of unsecured protected health information, notify each individual whose unsecured protected health information has been, or is reasonably believed by the covered entity to have been, accessed, acquired, used, or disclosed as a result of such breach.

(2) *Breaches treated as discovered.* For purposes of paragraph (a)(1) of this section, §§ 164.406(a), and 164.408(a), a breach shall be treated as discovered by a covered entity as of the first day on which such breach is known to the covered entity, or, by exercising reasonable diligence would have been known to the covered entity. A covered entity shall be deemed to have knowledge of a breach if such breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is a workforce member or agent of the covered entity (determined in accordance with the federal common law of agency).

(b) *Implementation specification: Timeliness of notification.* Except as provided in § 164.412, a covered entity shall provide the notification required by paragraph (a) of this section without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

(c) *Implementation specifications: Content of notification*—(1) *Elements.* The notification required by paragraph (a) of this section shall include, to the extent possible:

(A) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

(B) A description of the types of unsecured protected health information that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(C) Any steps individuals should take to protect themselves from potential harm resulting from the breach;

(D) A brief description of what the covered entity involved is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and

(E) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

(2) *Plain language requirement.* The notification required by paragraph (a) of this section shall be written in plain language.

(d) *Implementation specifications: Methods of individual notification.* The notification required by paragraph (a) of this section shall be provided in the following form:

(1) *Written notice.* (i) Written notification by first-class mail to the individual at the last known address of the individual or, if the individual agrees to electronic notice and such agreement has not been withdrawn, by electronic mail. The notification may be provided in one or more mailings as information is available.

(ii) If the covered entity knows the individual is deceased and has the address of the next of kin or personal representative of the individual (as specified under § 164.502(g)(4) of subpart E), written notification by first-class mail to either the next of kin or personal representative of the individual. The notification may be provided in one or more mailings as information is available.

(2) *Substitute notice.* In the case in which there is insufficient or out-of-date contact information that precludes written notification to the individual under paragraph (d)(1)(i) of this section, a substitute form of notice reasonably calculated to reach the individual shall be provided. Substitute notice need not be provided in the case in which there is insufficient or out-of-date contact information that precludes written notification to the next of kin or personal representative of the individual under paragraph (d)(1)(ii).

(i) In the case in which there is insufficient or out-of-date contact information for fewer than 10 individuals, then such substitute notice may be provided by an alternative form of written notice, telephone, or other means.

(ii) In the case in which there is insufficient or out-of-date contact information for 10 or more individuals, then such substitute notice shall:

(A) Be in the form of either a conspicuous posting for a period of 90 days on the home page of the Web site of the covered entity involved, or conspicuous notice in major print or broadcast media in geographic areas where the individuals affected by the breach likely reside; and

(B) Include a toll-free phone number that remains active for at least 90 days where an individual can learn whether the individual's unsecured protected health information may be included in the breach.

(3) *Additional notice in urgent situations.* In any case deemed by the covered entity to require urgency because of possible imminent misuse of unsecured protected health information, the covered entity may provide information to individuals by telephone or other means, as appropriate, in addition to notice provided under paragraph (d)(1) of this section.

§ 164.406 Notification to the media.

(a) *Standard.* For a breach of unsecured protected health information involving more than 500 residents of a State or jurisdiction, a covered entity shall, following the discovery of the breach as provided in § 164.404(a)(2), notify prominent media outlets serving the State or jurisdiction. For purposes of this section, *State* includes American Samoa and the Northern Mariana Islands.

(b) *Implementation specification: Timeliness of notification.* Except as provided in § 164.412, a covered entity shall provide the notification required by paragraph (a) of this section without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

(c) *Implementation specifications: Content of notification.* The notification required by paragraph (a) of this section shall meet the requirements of § 164.404(c).

§ 164.408 Notification to the Secretary.

(a) *Standard.* A covered entity shall, following the discovery of a breach of unsecured protected health information

as provided in § 164.404(a)(2), notify the Secretary.

(b) *Implementation specifications: Breaches involving 500 or more individuals.* For breaches of unsecured protected health information involving 500 or more individuals, a covered entity shall, except as provided in § 164.412, provide the notification required by paragraph (a) of this section contemporaneously with the notice required by § 164.404(a) and in the manner specified on the HHS Web site.

(c) *Implementation specifications: Breaches involving less than 500 individuals.* For breaches of unsecured protected health information involving less than 500 individuals, a covered entity shall maintain a log or other documentation of such breaches and, not later than 60 days after the end of each calendar year, provide the notification required by paragraph (a) of this section for breaches occurring during the preceding calendar year, in the manner specified on the HHS Web site.

§ 164.410 Notification by a business associate.

(a) *Standard.* (1) A business associate shall, following the discovery of a breach of unsecured protected health information, notify the covered entity of such breach.

(2) *Breaches treated as discovered.* For purposes of paragraph (1) of this section, a breach shall be treated as discovered by a business associate as of the first day on which such breach is known to the business associate or, by exercising reasonable diligence, would have been known to the business associate. A business associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the business associate (determined in accordance with the federal common law of agency).

(b) *Implementation specifications: Timeliness of notification.* Except as provided in § 164.412, a business associate shall provide the notification required by paragraph (a) of this section without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

(c) *Implementation specifications: Content of notification.* (1) The notification required by paragraph (a) of this section shall include, to the extent possible, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed during the breach.

(2) A business associate shall provide the covered entity with any other available information that the covered entity is required to include in notification to the individual under § 164.404(c) at the time of the notification required by paragraph (a) of this section or promptly thereafter as information becomes available.

§ 164.412 Law enforcement delay.

If a law enforcement official states to a covered entity or business associate that a notification, notice, or posting required under this subpart would impede a criminal investigation or cause damage to national security, a covered entity or business associate shall:

(a) If the statement is in writing and specifies the time for which a delay is required, delay such notification, notice, or posting for the time period specified by the official; or

(b) If the statement is made orally, document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

§ 164.414 Administrative requirements and burden of proof.

(a) *Administrative requirements.* A covered entity is required to comply with the administrative requirements of § 164.530(b), (d), (e), (g), (h), (i), and (j) with respect to the requirements of this subpart.

(b) *Burden of proof.* In the event of a use or disclosure in violation of subpart E, the covered entity or business associate, as applicable, shall have the burden of demonstrating that all notifications were made as required by this subpart or that the use or disclosure did not constitute a breach, as defined at § 164.402.

§ 164.501 [Amended]

■ 10. In § 164.501, remove the definition ''Law enforcement official.''

■ 11. In § 164.530, revise paragraphs (b)(1), (b)(2)(i)(C), (d)(1), the first sentence of paragraph (e)(1), (g)(1), (h), the first sentence of paragraph (i)(1), (i)(2)(i) and add paragraph (j)(1)(iv) to read as follows:

§ 164.530 Administrative requirements.

* * * * *

(b)(1) *Standard: Training.* A covered entity must train all members of its workforce on the policies and procedures with respect to protected health information required by this subpart and subpart D of this part, as necessary and appropriate for the members of the workforce to carry out their functions within the covered entity.

(2) * * * (i) * * *

(C) To each member of the covered entity's workforce whose functions are affected by a material change in the policies or procedures required by this subpart or subpart D of this part, within a reasonable period of time after the material change becomes effective in accordance with paragraph (i) of this section.

* * * * *

(d)(1) *Standard: Complaints to the covered entity.* A covered entity must provide a process for individuals to make complaints concerning the covered entity's policies and procedures required by this subpart and subpart D of this part or its compliance with such policies and procedures or the requirements of this subpart or subpart D of this part.

* * * * *

(e)(1) *Standard: Sanctions.* A covered entity must have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of the covered entity or the requirements of this subpart or subpart D of this part.* * *

* * * * *

(g) *Standard: Refraining from intimidating or retaliatory acts.* A covered entity—

(1) May not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for the exercise by the individual of any right established, or for participation in any process provided for, by this subpart or subpart D of this part, including the filing of a complaint under this section; and

* * * * *

(h) *Standard: Waiver of rights.* A covered entity may not require individuals to waive their rights under § 160.306 of this subchapter, this subpart, or subpart D of this part, as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

(i)(1) *Standard: Policies and procedures.* A covered entity must implement policies and procedures with respect to protected health information that are designed to comply with the standards, implementation specifications, or other requirements of this subpart and subpart D of this part.

* * *

(2) *Standard: Changes to policies and procedures.*

(i) A covered entity must change its policies and procedures as necessary and appropriate to comply with changes in the law, including the standards, requirements, and implementation specifications of this subpart or subpart D of this part.

* * * * *

(j)(1) * * *

(iv) Maintain documentation sufficient to meet its burden of proof under § 164.414(b).

* * * * *

Dated: August 6, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–20169 Filed 8–19–09; 4:15 pm]

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Federal Register

Vol. 74, No. 162

Monday, August 24, 2009

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TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, AUGUST

38323–38502 3
38503–38884 4
38885–39210 5
39211–39534 6
39535–39870 7
39871–40056 10
40057–40470 11
40471–40718 12
40719–41032 13
41033–41326 14
41327–41580 17
41581–41786 18
41787–42024 19
42025–42168 20
42169–42572 21
42573–42770 24

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Presidential Determinations:
Presidential Determination 2009–23 of July 8, 2009 41787
No. 2009-24 of August 13, 2009 42573
Memorandums:
Memorandum of July 30, 2009 38885
Memorandum of August 5, 2009.....39871
Memorandum of August 6, 2009.....40055
Notices:
Notice of August 13, 2009 41325

4 CFR

202.....38503
Proposed Rules:
200.....38363
201.....38366

5 CFR

300.....40057
315.....40471
316.....40471
532.....42169

6 CFR

5 .....38887, 42575, 42576, 42577, 42578, 42579

7 CFR

6.....41033
210.....38889
925.....38323
932.....38324
944.....38323
948.....38504
959.....38505
1205.....39211
1415.....42170
1436.....41581
Proposed Rules:
761.....39565
766.....39565
983.....39230
1493.....39240

8 CFR

Proposed Rules:
274a.....41801

9 CFR

145.....38326
Proposed Rules:
201.....42608

10 CFR

26.....38326
50.....38890
72.....40060
Proposed Rules:
31.....38372
50 .....38987, 40006, 40765
52.....40006
110.....41096
609.....39569

11 CFR

111.....39535

12 CFR

226.....40477, 41194
308.....40478
363.....40478
619.....40060
620.....40060
621.....40060
1229.....38508
1282.....39873
1291.....38514
Proposed Rules:
914.....38559
985.....38564
989.....38564
1235.....38559
1273.....38564
1274.....38564
1282.....38572
1732.....38559

13 CFR

313.....41592
315.....41592

14 CFR

25 .....38328, 40479, 40482
39 .....38340, 38894, 38896, 38899, 38901, 38903, 38905, 38910, 38912, 40061, 40484, 41327, 41603, 41605, 41607, 41611
61.....42500
71 .....40065, 40066, 40067
91.....42174, 42500
95.....40488
97 .....40719, 40721, 41613, 41615
121.....42174
125.....42174
135.....38522
141.....42500
Proposed Rules:
1.....41522
21.....39242
23.....41522
39 .....38381, 38988, 38991, 38993, 38995, 38999, 39243, 39582, 40525, 40527, 40529,

40776, 40778, 40781, 41096, 41642, 41805, 41807, 41810, 41813, 42610
71 .....39001, 39002, 39908, 40534, 40535

15 CFR

30.....38914
801.....41035
902.....42580
Proposed Rules:
742.....40117
774.....40117

16 CFR

317.....40686
1500.....39535
Proposed Rules:
310.....41988
425.....40121
1112.....40784

17 CFR

7.....39211
200.....40068
232.....38523
248.....40398
Proposed Rules:
190.....40794
242.....42033
275.....39840

18 CFR

385.....41037
Proposed Rules:
410.....41100

20 CFR

10.....41617
Proposed Rules:
618.....39198
652.....41815
661.....41815
662.....41815
663.....41815
664.....41815
667.....41815

21 CFR

2.....40069
312.....40872, 40900
316.....40900
510.....38341
524.....38341
558.....40723, 41631
601.....42175
872.....38686
Proposed Rules:
310.....42184
314.....42184
600.....42184
803.....42203
1308.....42217

22 CFR

123.....38342, 39212
124.....38342
126.....38342
129.....38342

25 CFR

26.....41328
27.....41328

26 CFR

1.....38830
31.....38830
602.....38830
Proposed Rules:
301.....39003

28 CFR

Proposed Rules:
58.....41101

29 CFR

1612.....42025
1910.....40442
4022.....41039
Proposed Rules:
471.....38488
1910.....40450

30 CFR

250.....40069
251.....40726
Proposed Rules:
926.....40537, 40799

32 CFR

706.....42604

33 CFR

100 .....38524, 39213, 40731
117 .....41632, 41789, 41790
147.....38524
165 .....38524, 38530, 38916, 38918, 39216, 40734, 41040, 41043, 41045, 41334, 42026
Proposed Rules:
117 .....40802, 41816, 42037
147.....42612
165 .....39247, 39584, 42220, 42614
168.....41646

34 CFR

371.....40495
Proposed Rules:
600.....39498, 42380
602.....39498
668.....42380
675.....42380
686.....42380
690.....42380
692.....42380

36 CFR

223.....40736
1012.....42028

37 CFR

201.....39900
351.....38532

38 CFR

Proposed Rules:
1.....39589
3.....42617
4.....39591

39 CFR

3020 .....38921, 40708, 40714, 41047, 41051, 41336, 41633, 41791
Proposed Rules:
111.....38383
3020.....38533
3050.....39909

40 CFR

50.....40074
51.....40074
52 .....38536, 40083, 40745, 40747, 40750, 41340, 41637
55.....40498, 42175
62.....38344, 38346
141.....38348
174.....39540
180 .....38924, 38935, 38945, 38952, 38956, 38962, 38970, 39543, 39545, 40503, 40509, 40513, 40753, 41794
271.....40518
300.....40085, 41341
721.....42177
Proposed Rules:
52 .....39007, 39592, 40122, 40123, 40804, 40805, 41104, 41357, 41648, 41818, 41826, 41829, 42038
62.....38384, 38385
63.....39013
80.....41359, 42619
96.....39592
211.....39150, 42223
271.....40539
300.....40123, 41361
372.....42625

41 CFR

102-36.....41060

42 CFR

405.....39384
412.....39762
418.....39384
483.....40288
Proposed Rules:
73.....41829
409.....39436, 40948
410.....39032
411.....39032
414.....39032
415.....39032
424.....39436, 40948
484.....39436, 40948
485.....39032
489.....39436, 40948

44 CFR

64.....38358, 41056
Proposed Rules:
67.....38386
206.....40124

45 CFR

160.....42740
164.....42740

46 CFR

10.....39218
11.....39218
Proposed Rules:
535.....41831

47 CFR

1.....39219, 40089
63.....39551
73 .....39228, 41059, 41798, 41799
Proposed Rules:
2.....39249
15.....42631
73 .....38388, 38389, 39529, 39260, 39261, 40806, 41106, 41831, 41832, 42043
95.....39249

48 CFR

Ch. 1.....40458, 40468
4.....40463
5.....40459
7.....40459
15.....40463
22.....40460, 40461
25.....40461, 40463
28.....40466
30.....40467
32.....40468
52 .....40460, 40461, 40463, 40466, 40467, 40468
501.....41060
502.....39563
519.....41060
552.....41060
3025.....41346
3052.....41346
Proposed Rules:
2 .....39262, 40131, 42639
4 .....39262, 40131, 42044
12.....40131
15.....39262
17.....42639
22.....42639
25.....39597
36.....42639
39.....40131
42.....39262, 42044
45.....39262
52 .....39262, 40131, 42044, 42639

49 CFR

89.....40521
501.....41067
571.....40760
593.....41068
599.....38974
Proposed Rules:
213.....41558
237.....41558
544.....41362
571.....42639

50 CFR

17.....40132
20.....40138
25.....41351
32.....41351
223.....42605
226.....39903
300.....38544
648 .....39229, 42580, 42606
679 .....38558, 38985, 40523, 41080, 42178
680.....41092
Proposed Rules:
17 .....39268, 40540, 40650, 41649, 41662, 41832
20.....39598, 41008
229.....39910, 39914
218.....40560
300.....39032, 39269
600.....39914
635.....39032, 39914
665.....42641

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 774/P.L. 111–50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the "Geraldine Ferraro Post Office Building". (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111–51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the "John Scott Challis, Jr. Post Office". (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111–52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the "Elijah Pat Larkins Post Office Building". (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111–53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111–54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the "Caroline O'Day Post Office Building". (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111–55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building". (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111–56

To designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the "Herbert A Littleton Postal Station". (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111–57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the "Laredo Veterans Post Office". (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111–58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the "Kile G. West Post Office Building". (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111–59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the "Lieutenant Commander Roy H. Boehm Post Office Building". (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111–60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111–61

Recognizing the service, sacrifice, honor, and professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111–62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

Last List August 14, 2009

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