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Contents

Federal Register

Vol. 74, No. 168

Tuesday, September 1, 2009

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45211–45214

Agricultural Research Service
NOTICES
Intent to Grant Exclusive License, 45164–45165

Agriculture Department
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service
See National Agricultural Statistics Service
See Rural Business–Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45159

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45162–45163
Determinations of Nonregulated Status:
University of Florida; Papaya Genetically Engineered for Resistance to Papaya Ringspot Virus, 45163–45164

Antitrust Division
NOTICES
Proposed Final Judgment and Competitive Impact Statement:
United States v. Microsemi Corp., 45242–45252

Census Bureau
NOTICES
Meetings:
Census Advisory Committee of Professional Associations, 45185–45186
Census Advisory Committees, 45185

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45214–45216

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 45177

Coast Guard
RULES
Safety Zones:
Lower Mississippi River, USACE Revetment (Mile Marker 869 to 303), 45120–45122
NOTICES
Imposition of Conditions of Entry for Certain Vessels Arriving to the United States, Republic of the Congo, 45230
Meetings:
Merchant Marine Personnel Advisory Committee, 45231

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings:
Energy and Environmental Markets Advisory Committee, 45186–45187
Meetings; Sunshine Act, 45187

Consumer Product Safety Commission
RULES
Civil Penalty Factors, 45101–45107
PROPOSED RULES
Civil Penalty Factors; Withdrawal; Correction, 45133

Corporation for National and Community Service
NOTICES
Meetings; Sunshine Act, 45187

Education Department
NOTICES
Applications for Fiscal year 2009 Awards:
Centers for Independent Living, 45188–45191

Employee Benefits Security Administration
NOTICES
Grant of Individual Exemptions and Prohibited Transaction Exemptions:
PNC Financial Services Group, Inc., et al., 45284–45304

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board Chairs, 45191–45192
Environmental Management Site-Specific Advisory Board, Paducah, KY, 45191

Environmental Protection Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45198–45200
Petition to Revoke Tolerances for 13 Pesticides; Availability, 45200–45202
Project Waivers:
Town of Cape Charles, VA, 45202–45203
Settlements:
Vertut Blending and Packaging Superfund Site; Memphis, Shelby County, TN, 45203–45204

Federal Aviation Administration
RULES
Special Conditions:
Cessna Aircraft Company, Model 525C; Single Point Refuel/Defuel System, 45100–45101
PROPOSED RULES
Airworthiness Directives:
Fokker Model F 28 Mark 0070 and 0100 Airplanes, 45139–45142

McDonnell Douglas Models DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, et al., Airplanes, 45135–45139
Class E Airspace; Revision:
Manokotak, AK, 45142–45143
Special Conditions:
Cessna Aircraft Company, Model 525C; High Fuel Temperature, 45133–45135
NOTICES
Meetings:
Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures, 45279
Global Positioning System, 45279–45280

Federal Communications Commission
RULES
Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, 45126–45131
Television Broadcasting Services:
Ann Arbor, MI, 45126
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45204

Federal Deposit Insurance Corporation
RULES
Temporary Liquidity Guarantee Program to Extend the Transaction Account Guarantee Program with Modified Fee Structure, 45093–45100

Federal Emergency Management Agency
RULES
Suspension of Community Eligibility, 45122–45126

Federal Energy Regulatory Commission
NOTICES
Combined Notice of Filings, 45192–45198

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Orange County, CA, 45275–45276

Federal Motor Carrier Safety Administration
NOTICES
Fiscal Year 2010 Safety Grants; Correction, 45279
Qualification of Drivers; Exemption Renewals:
Vision, 45280

Federal Railroad Administration
NOTICES
Adjustment of Nationwide Significant Risk Threshold, 45270–45271

Federal Trade Commission
NOTICES
Proposed Consent Agreement:
Dyna–E International, Inc.; Analysis of Proposed Consent Order to Aid Public Comment, 45204–45206

Federal Transit Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed Transit Improvements to the Orange Line, Cook County, IL, 45271–45273
Proposed Transit Improvements to the Red Line, Cook County, IL, 45276–45279
Proposed Transit Improvements to the Yellow Line, Cook County, IL, 45273–45275

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45216–45221
Guidance for Industry:
Labeling of Nonprescription Human Drug Products, etc., 45222–45223
Questions and Answers Regarding the Labeling of Dietary Supplements, etc., 45221–45222
Patent Extensions:
TAPENTADOL HYDROCHLORIDE, 45225–45226

Food and Nutrition Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45159–45161

Forest Service
NOTICES
Call for Nominations:
Primary and Alternate Representatives, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, 45240–45241
Proposed New Fee, 45165

Geological Survey
NOTICES
Meetings:
Federal Interagency Steering Committee on Multimedia Environmental Modeling, 45241

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
340 Drug Pricing Program:
Childrens Hospitals, 45206–45211

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 45231–45235
Privacy Act; Systems of Records, 45235–45240

Interior Department
See Geological Survey
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Amended Final Results of Antidumping Duty Administrative Review:
Certain Cased Pencils from the People's Republic of China, 45177–45178
Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation:
Advance Notification of Sunset Reviews, 45181

Opportunity to Request Administrative Review, 45179–45180
Antidumping:
Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 45181–45182
Meetings:
U.S. Travel and Tourism Advisory Board, 45186

Justice Department
See Antitrust Division
NOTICES
Consent Decrees:
United States and Louisville Metro Air Pollution Control District v. D.D. Williamson and Co., Inc., 45242
United States v. Bowater Inc., 45241–45242

Labor Department
See Employee Benefits Security Administration
See Labor–Management Standards Office
See Occupational Safety and Health Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Job Corps; Preliminary Finding of No Significant Impact for a Small Wind Turbine Installation at the Laredo Job Corps Center, Laredo, TX, 45254
Job Corps; Preliminary Finding of No Significant Impact for Small Wind Turbine Installation at the Cassadaga, NY Job Corps Center, Pomfret, NY, 45254
Job Corps; Preliminary Finding of No Significant Impact for Small Wind Turbine Installation at the Hawaii–Maui Job Corps Center, Maui, HI, 45253
Job Corps; Preliminary Finding of No Significant Impact for Small Wind Turbine Installation, Angell Job Corps Center, Yachats, OR, 45254–45255
Job Corps; Preliminary Finding of No Significant Impact for the Edison Job Corps Center Solar PV Project, Edison, NJ, 45252–45253
Job Corps; Preliminary Finding of No Significant Impact for the Solar Photovoltaic Project, Westover Job Corp Center, Chicopee, MA, 45252

Labor–Management Standards Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45255–45256

Land Management Bureau
NOTICES
Call for Nominations:
Primary and Alternate Representatives, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, 45240–45241

National Agricultural Statistics Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45161–45162

National Highway Traffic Safety Administration
PROPOSED RULES
Federal Motor Vehicle Safety Standards:
Power-Operated Window, Partition, and Roof Panel Systems, 45143–45158

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review Special Emphasis Panel, 45224
National Advisory Child Health and Human Development Council, 45224–45225
National Human Genome Research Institute, 45223–45224
National Institute on Alcohol Abuse and Alcoholism, 45223, 45225

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Loan Program for Crab Quota Share (Amendment 33), 45131–45132
Fisheries of the Northeastern United States:
Summer Flounder Fishery; Commercial Quota Harvested for Commonwealth of Massachusetts, 45131
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 45182–45184
New England Fishery Management Council, 45183–45185
North Pacific Fishery Management Council, 45184
Pacific Fishery Management Council, 45183

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 45256

Occupational Safety and Health Administration
RULES
Initial Approval Determination:
Illinois Public Employee Only State Plan, 45107–45116

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act; Cancellations, 45256–45257

Personnel Management Office
NOTICES
Excepted Service, 45257–45259

Rural Business–Cooperative Service
NOTICES
Value-Added Producer Grant Application Deadlines, 45165–45177

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45260–45261
Applications:
Arrow Investment Advisers, LLC, and Arrow Funds Trust, 45261–45267
Meetings; Sunshine Act, 45267
Order of Suspension of Trading:
Brooke Corp., 45267–45268
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., 45268–45269

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45259–45260

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45269–45270

Culturally Significant Object Imported for Exhibition Determinations:
Luc Tuymans, 45270

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Mining Reclamation and Enforcement Office
RULES
Utah Regulatory Program, 45116–45120

Thrift Supervision Office
NOTICES
Appointment of Receiver:
Guaranty Bank, Austin, TX, 45281

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration

Treasury Department
See Thrift Supervision Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45280–45281

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 45227–45229

U.S. Customs and Border Protection
NOTICES
Accreditation and Approval as Commercial Gauger and Laboratory:
Chemical and Petrochemical Inspections LP, 45226
SGS North America Inc., 45226–45227
Approval as Commercial Gauger:
Camin Cargo Control Inc., 45229–45230
Saybolt LP, 45229
SGS North America Inc., Tampa FL, 45229

Separate Parts In This Issue

Part II
Labor Department, Employee Benefits Security Administration, 45284–45304

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.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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.

12 CFR
370 45093

14 CFR
23 45100

Proposed Rules:
23 45133
39 (2 documents) 45135, 45139
71 45142

16 CFR
1119 45101

Proposed Rules:
1119 45133

29 CFR
1956 45107

30 CFR
944 45116

33 CFR
165 45120

44 CFR
64 45122

47 CFR
73 45126
74 45126

49 CFR

Proposed Rules:
571 45143

50 CFR
648 45131
679 45131

Rules and Regulations

Federal Register

Vol. 74, No. 168

Tuesday, September 1, 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.

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Final Rule Regarding Limited Amendment of the Temporary Liquidity Guarantee Program To Extend the Transaction Account Guarantee Program With Modified Fee Structure

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: To assure an orderly phase out of the Transaction Account Guarantee (TAG) component of the Temporary Liquidity Guarantee Program (TLGP), the FDIC is extending the TAG program for six months until June 30, 2010. Each insured depository institution (IDI) that participates in the extended TAG program will be subject to increased fees during the extension period for the FDIC's guarantee of qualifying noninterest-bearing transaction accounts. However, each IDI that is currently participating in the TAG program will have an opportunity to opt out of the extended TAG program. Each IDI that is currently participating in the TAG program must review and update its disclosure postings and notices to accurately reflect whether it is participating in the extended TAG program.

DATES: The Final rule becomes effective on October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov*; A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov*; Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@fdic.gov*; Joe DiNuzzo, Counsel, Legal Division, (202) 898–7349 or *jdinuzzo@fdic.gov*; Lisa D Arquette, Associate Director, Division of Supervision and Consumer Protection, (202) 898–8633 or *larquette@fdic.gov*; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance, (703) 562–6167 or *dsaulnier@fdic.gov*; or Munsell St. Clair, Chief, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967 or *mstclair@fdic.gov.*

SUPPLEMENTARY INFORMATION

I. Background

The FDIC established the TLGP in October 2008 following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve).[1] The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

On October 23, 2008, the FDIC's Board of Directors (Board) authorized the publication in the **Federal Register** of an interim rule that outlined the structure of the TLGP.[2] Designed to assist in the stabilization of the nation's financial system, the FDIC's TLGP is composed of two distinct components: The Debt Guarantee Program (DGP) and the TAG program. Pursuant to the DGP the FDIC guarantees certain senior unsecured debt issued by participating entities. Pursuant to the TAG program the FDIC guarantees all funds held in qualifying noninterest-bearing transaction accounts at participating IDIs.

The TAG program was originally scheduled to expire on December 31, 2009.[3] Over 7,100 IDIs participate in the TAG program, and the FDIC has guaranteed an estimated $700 billion of deposits in noninterest-bearing transaction accounts that would not otherwise be insured. Under the TAG program each IDI that offers noninterest-bearing transaction accounts is required to post a conspicuous notice in the lobby of its main office and each branch office, and on its Web site, if applicable, that discloses whether the IDI is participating in the TAG program.[4] Disclosures for participating IDIs must contain a statement that indicates that all noninterest-bearing transaction accounts are fully guaranteed by the FDIC.[5] In addition, even those IDIs that are not participating in the TAG program are required to disclose that deposits in noninterest-bearing transaction accounts continue to be insured for up to $250,000, pursuant to the FDIC's general deposit insurance rules.[6] At this time, IDIs participating in the TAG program pay quarterly an annualized 10 basis point assessment on any deposit amounts that exceed the existing deposit insurance limit.[7]

II. The Notice of Proposed Rulemaking

As with those entities participating in the DGP, the FDIC is committed to providing an orderly phase-out of the TAG program for participating IDIs and their depositors. To that end, the Board authorized publication in the **Federal Register** of a notice of proposed rulemaking that presented two

[1] See Section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability, and the FDIC implemented the TLGP in response. Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth, provides additional authority for the establishment of the TLGP.

[2] 73 FR 64179 (October 29, 2008). The Final Rule was published in the **Federal Register** on November 26, 2008. 73 FR 72244 (November 26, 2008).

[3] The other component of the TLGP, the DGP, initially permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the FDIC's guarantee for such debt to expire on the earlier of the maturity of the debt (or the conversion date, for mandatory convertible debt) or June 30, 2012. To reduce market disruption at the conclusion of the DGP and to facilitate the orderly phase-out of the program, the Board issued a final rule that generally extended for four months the period during which participating entities could issue FDIC-guaranteed debt. 74 FR 26521 (June 3, 2009). All IDIs and those other participating entities that had issued FDIC-guaranteed debt on or before April 1, 2009, were permitted to participate in the extended DGP without application to the FDIC. Other participating entities that were specifically approved by the FDIC also could participate in the extended DGP. At the same time, the FDIC extended the expiration of the guarantee period from June 30, 2012 to December 31, 2012. As a result, participating entities may issue FDIC-guaranteed, debt through and including October 31, 2009, and the FDIC's guarantee for such debt expires on the earliest of the mandatory convertible debt, the stated date of maturity, or December 31, 2012.

[4] 12 CFR 370.5(h)(5).

[5] *Id.*

[6] *Id.*

[7] 12 CFR 370.7(c).

alternatives for phasing out the TAG program (the ''Proposed Rule'').[8]

The first alternative described in the Proposed Rule, designated Alternative A, would preserve the original termination date for the TAG program. For those IDIs that had not opted out of the TAG program, under this option, the FDIC's guarantee of noninterest-bearing transaction accounts would expire on December 31, 2009.

The second alternative, designated Alternative B, proposed the extension of the TAG program through June 30, 2010, six months beyond the current expiration date of December 31, 2009. Under this option, IDIs are provided an opportunity to opt out of the extended TAG program; if an IDI that is currently participating in the program opts out, Alternative B provided that the FDIC's guarantee would expire as scheduled on December 31, 2009. To balance the income generated from TAG fees with potential losses associated with the TAG program during the extension period, the FDIC proposed to increase the assessment rate to an annualized rate of 25 basis points (rather than the current 10 basis points) on the guaranteed deposits in noninterest-bearing transaction accounts. Under this option, the increased fee would be collected quarterly in the same manner provided in existing regulations. Finally, Alternative B recognized that some IDIs would have to revise their disclosures related to the TAG program. This would be required only if their current disclosures became inaccurate following extension of the TAG program. For example, under Alternative B, each IDI that is participating in the extension would need to revise its disclosures if its existing disclosures indicated that the FDIC's guarantee will apply only through December 31, 2009. Such an IDI would need to revise its disclosures to indicate that the guarantee will apply through June 30, 2010.

III. Comment Summary and Discussion

The FDIC requested comment on every aspect of the Proposed Rule. In addition, the FDIC posed specific questions relating to proposed Alternative B. The FDIC received 91 comments on the proposed rule. The commenters included 60 insured depository institutions, 13 industry associations, 5 holding companies, 7 state government entities, 3 bankers' banks, and 3 depositors. A summary of the comments, including a summary of the comments addressing the specific questions, follows.

A. Alternatives for Phasing Out TAG Program

The FDIC sought information on whether commenters preferred Alternative A or Alternative B (or some other alternative) as the most appropriate means of insuring an orderly phase-out of the FDIC's TAG program. The FDIC received 15 comments expressly supporting Alternative A and 44 comments expressly supporting Alternative B. A summary of the comments the FDIC received in both of those categories follows.

Comments Favoring Alternative A

The FDIC received 15 comments expressly supporting Alternative A. Commenters supporting Alternative A generally shared the opinion that financial market volatility and risk aversion have moderated since the FDIC implemented the TAG program in the fall of 2008. These commenters generally noted that recent economic and financial market improvements, such as greater access to debt and capital markets and increased depositor and consumer confidence in the banking system, have eliminated the need for the TAG program.

A small number of commenters supporting Alternative A expressed concern that an extension of the TAG program would burden healthy institutions that elect to opt out. An insured depository institution electing to opt out of the extended TAG program would be required to disclose to customers that balances in its non-interest-bearing transaction accounts exceeding the $250,000 limit are no longer guaranteed under the TAG program. Several commenters expressed concern that such disclosures would result in a loss of depositor relationships. Similarly, a small number of the comments favoring Alternative A suggested that extending the TAG program with an opt-out election as proposed under Alternative B would effectively punish institutions electing to opt out and give an unfair competitive advantage to those institutions that elect to remain in the TAG program through the extended period. Specifically, these commenters expressed concern that customers would inaccurately perceive a bank's election to opt out of the TAG program extension as an indication that the non-interest bearing transaction account balances exceeding $250,000 at that bank are at risk. To avoid customer confusion and any unfair competitive advantage being created by an extension of the TAG program, these commenters recommended that the FDIC allow the TAG program to phase out under Alternative A.

Comments Favoring Alternative B

The FDIC received 44 comments expressly supporting Alternative B as the more appropriate method of phasing out the TAG program. Commenters that supported Alternative B generally expressed a belief that, despite vast improvement since the fall of 2008, the economy has not yet stabilized to the point that depositors would be comfortable having large uninsured or non-guaranteed transaction balances on deposit with smaller insured depository institutions or community banks. A number of comments the FDIC received from community banks and state and national banking industry associations expressed concerns that regions of the country most affected by the recent financial and economic turmoil would not see an improvement in depositor confidence within the phase-out time period proposed in Alternative A. These commenters also emphasized that an extension of the TAG program is important to the country's continuing economic recovery.

The FDIC also received several comments expressing concern that expiration of the TAG program under Alternative A would result in a significant shift in large business deposits and public deposits away from community banks. Given the current economic environment, depositors with large balances in non-interest bearing transaction accounts could be motivated to move their deposits away from smaller insured depository institutions for the perceived security of a larger ''too big to fail'' insured depository institution if the TAG program were to expire. A depletion of large noninterest-bearing transaction account balances would significantly harm community banks and smaller insured depository institutions by putting them at risk of becoming troubled, especially in those regions of the country still recovering economically.

In addition, the FDIC received several comments concerning the effect that recent media coverage has had on the public's perception of the banking industry. As one community bank noted, news stories covering the current problems with commercial real estate and bank failures have caused the business community and many depositors to be very concerned about the safety of their money. The commenter recommended adopting Alternative B as an appropriate phase out for the TAG program because it would counter such negative media

[8] 74 FR 31217 (June 30, 2009).

coverage and would help alleviate the concerns of large businesses and public entities about the safety of their non-interest bearing transaction accounts that exceed $250,000.

For several reasons the FDIC believes that the better alternative is to extend the TAG program beyond December 31, 2009. The FDIC, like some commenters, has observed that significant improvement in the financial markets has been made since last fall. However, the FDIC believes that there are still significant portions of the banking industry, particularly in regions still suffering the most from recent economic turmoil, that will benefit of the TAG program beyond the end of this year. Progress toward a stable, fully-functioning financial marketplace has been made, and the FDIC believes that the TAG program, as well as the DGP, was instrumental in achieving these improvements. However, terminating the TAG program too quickly could significantly impair or erase that progress. Moreover, all currently participating entities can choose whether they will participate in the extension of the TAG program. The FDIC believes that any competitive disadvantage that may be incurred by choosing not to participate is outweighed by the help the program provides in stabilizing the financial markets and restoring public confidence in the economy and the banking industry.

B. Specific Questions Presented in the NPR

In addition to requesting information on whether commenters preferred Alternative A or Alternative B as the most appropriate means of ensuring an orderly phase out of the FDIC's TAG program, the FDIC also posed specific questions relating to proposed Alternative B. The specific questions, as well as a summary and discussion of the comments the FDIC received addressing each question, follows.

Question #1: If the TAG program is extended, is six months an appropriate time for the extension? If not, what would be considered an appropriate extension period for the TAG program?

The FDIC received 72 comments supporting an extension of the TAG program for at least six months. Commenters supporting a six-month extension of the TAG program generally indicated that a six-month period presented an appropriate timetable for phasing out the TAG program. One industry association noted that certain risk spreads have returned to pre-crisis levels, suggesting that the worst of the market turmoil has passed. However, that commenter also noted that some areas of the country continue to be affected by high unemployment rates, a decline in business activity, and increases in bank credit delinquencies and losses. The commenter supported a six-month extension as appropriate given the lingering financial threats in many local markets.

The FDIC also received 45 comments (including some of the comments that also expressly favored Alternative B) that recommended extending the TAG program for one-year (through December 31, 2010). A number of community banks cited various forecasts predicting that the U.S. economy will continue to face significant financial and economic pressures through 2009. Several of the comments noted that the TAG program has helped preserve the franchise values of banking institutions both through customer retention and reduction of the likelihood of bank deposit runs. A number of community banks also commented that the proposed six-month extension would be too short a time period to be of value for many insured depository institutions given the proposed 25 basis point fee.

Additionally, several commenters recommended extending the TAG program through the year 2013. Generally, these commenters advocated extending the TAG program to December 31, 2013 because it would match the TAG program's non-interest bearing transaction account guarantee time period with the time period established for the FDIC's $250,000 deposit insurance limit for individual accounts.

The FDIC does not disagree with projections that the economy will continue to face pressures through the remainder of this year. In fact, that premise is one of the bases for the decision to extend the TAG program. However, the FDIC does not agree that the TAG program should be extended for one year or longer. The TAG program, like the DGP, was always intended to be temporary. The FDIC believes that a six-month extension of the TAG program will provide the optimum balance between continuing to provide support to those institutions most affected by the recent financial and economic turmoil and phasing out the program in an orderly manner.

Question #2: In order to balance the income generated from TAG fees with potential losses associated with the TAG program during the extension period, the FDIC has proposed to charge an annualized rate of 25 basis points (rather than the current 10 basis points) on deposits in non-interest-bearing transaction accounts. Is this increase in fees appropriate? If not, what fee should be charged by the FDIC to cover potential losses caused by an extension of the TAG program?

A large number of commenters addressed the issue of whether a participation fee of 25 basis points on deposits in non-interest-bearing transaction accounts is appropriate for the proposed TAG program extension under Alternative B. While a few commenters were in favor of the proposed 25 basis point fee, a majority of the comments favored a fee less than 25 basis points.

The FDIC received 20 comments supporting the extension of the current fee structure (10 basis points) to cover the six-month extension of the TAG program as proposed in Alternative B. Some of these commenters raised concerns that a 25 basis-point fee for a six-month extension period is too high. One community bank expressed the belief that increasing the fees charged for the TAG program would decrease profitability and capital levels of FDIC member banks at a time when all banks are struggling to improve profitability. One commenter noted that while the assessment needs to be priced fairly, it is also important not to make the fee so expensive that some financial institutions cannot participate. One community bank commented that maintaining the 10 basis-point fee would encourage greater participation from healthier banks and could potentially generate greater revenue if collected during a time of a strengthening economy.

The FDIC also received 16 comments supporting a participation fee between 10 basis points and 25 basis points. These commenters generally shared the concerns of those who supported extending the current 10 basis-point fee, that is, they felt that a fee of 25 basis points is too high. However, commenters supporting a fee between 10 basis points and 25 basis points also recognized the increased costs the TAG program poses to the FDIC. Several of these commenters noted that the fee associated with the extension of the TAG program should be based on the costs of the program for the FDIC. A majority of these comments recommended that an appropriate

participation fee for the TAG program extension would fall within the range of 15 to 20 basis points based on the costs of the TAG program to the FDIC. A small number of comments from insured depository institutions stated that they would still participate in the TAG extension program if the participation fee were increased to 25 basis points.

The FDIC received 23 comments recommending that the FDIC adopt a risk-based approach to establish the participation fee for the TAG program extension. Specifically, these commenters suggested establishing fees that are commensurate with the risk profile of the participating bank as determined under the FDIC's risk-based assessment system for deposit insurance. One community bank commented that implementing a risk-based approach would encourage broader participation in the TAG program extension by the vast majority of banks that fall within Risk Category I and II, but more fully assess the cost per deposit at banks placed in higher Risk Categories. A second community bank commented that a risk-based approach to assessing the fee for participation in the TAG program extension would ensure that the banks that pose the most risk to the fund would pay the most for participation in the TAG program extension.

The cost of providing guarantees for noninterest-bearing transaction accounts at failed IDIs since the inception of the TAG program already has exceeded projected total TAG program revenue through the end of December 2009. Further, the FDIC projects additional failures of IDIs through the end of the year that will result in overall TAG losses that are expected to considerably exceed revenues. (Revenues generated from fees associated with the DGP are expected to cover TAG losses as well as losses incurred by the FDIC under the DGP.) In an effort to balance the income generated from TAG fees with potential losses associated with the TAG program during the extension period, the FDIC believes that the base fee for the guarantee should be increased.

The FDIC finds merit in the proposals that a risk-based system be implemented. Switching to a risk-based fee system will allow the FDIC to align the fees charged under the TAG program to the risks posed by the institutions that participate in the program. Those institutions that pose greater risk will be charged higher fees to reflect that risk and will thus bear more fully the cost from the extension of the program. Additionally, the higher overall fees will better cover the potential costs of the program.

Given the short duration of the TAG extension and the limited timeframe for implementing a risk-based fee system, the FDIC will rely on the general framework it has in place for the quarterly, risk-based premium system. Participants in the extended program will be charged a fee based on the risk category to which they are assigned for purposes of the risk-based premium system. The minimum annualized fee will be 15 basis points (rather than the current 10 basis points) on deposits in noninterest-bearing transaction accounts.

Question #3: Should the FDIC reduce the maximum interest rate for NOW accounts that qualify for the FDIC's guarantee under the TAG program? Would placing an interest rate limit on NOW accounts of no higher than 0.25 percent be appropriate? If not, what would be considered an appropriate rate limitation for NOW accounts?

The FDIC received 28 comments addressing the question of whether to reduce the maximum interest rate for NOW accounts that qualify for the TAG program during the proposed extension period under Alterative B. The FDIC received 12 comments expressly supporting a reduction of the maximum interest rate and 16 comments opposing a reduction.

One community bank that favored a reduction in the maximum interest rate for NOW accounts stated that dropping the maximum interest rate to a range of 35 to 40 basis points would more closely match current market alternatives. However, the commenter also raised concerns that a reduction of the interest rate ceiling to 25 basis points might encourage larger institutions to grab market share by pricing at higher levels with the implied security of government backing. On the other hand, another community bank expressed the opinion that reducing the interest rate ceiling on qualifying NOW accounts under the extended TAG program to 25 basis points would have no effect on the bank's customers. Similarly, a different community bank argued that a reduction in the maximum interest rate for NOW accounts is reasonable given that most money market rates have moved lower since the TAG program was introduced in the fall of 2008. However, this commenter also pointed out that NOW account customers are concerned with safety of principal and immediate funds availability rather than the maximum interest rate of the account.

In opposition to a reduction in the maximum interest rate limit for NOW accounts, the FDIC received several comments that expressed concern that a reduction in the maximum interest rate would confuse customers about the guarantees available under the TAG program extension.

A number of other commenters pointed out that a reduction in the maximum interest limit for NOW accounts would require participating banks in the TAG program extension to make costly disclosures to existing customers. Similarly, one national banking industry association commented that the potential disruption to NOW account customers and the cost of adjusting bank systems and customer agreements argues against altering the maximum interest rate limitation. A second national banking industry association supported not changing the maximum interest rate on NOW accounts because many institutions do not consider the interest rates on NOW accounts to be as sensitive as other deposit rates, and NOW account rates do not vary as the market fluctuates. The cost and confusion that could potentially accompany such a reduction would be disruptive for both participating banks and NOW account customers.

The FDIC agrees with many of the concerns raised by commenters who support no change to the maximum permissible interest rate for qualifying NOW accounts. The FDIC believes that there would be a potential for customer confusion about the availability of the guarantee if the maximum interest rate is changed for the remainder of the program. Each participating institution would also have to revise or adjust its banking systems, customer agreements, and disclosures to reflect the change. The burden of making these changes, the potential for customer confusion, and the relatively short period of time of the extension (*i.e.,* six months) argue against making such a change. Therefore, the FDIC has decided not to change the maximum interest rate limit for NOW accounts. The term ''noninterest-bearing transaction account'' will continue to include only those NOW accounts with interest rates that are no higher than 0.50 per cent as further described in 12 CFR 370.2(h).

IV. The Final Rule

In general, the final rule amends various provisions in 12 CFR Part 370 to (1) Extend for six months the expiration date of the TAG program, (2) increase the assessment fee that applies during that six month period from 10 basis points to either 15 basis points, 20

basis points, or 25 basis points depending on the entity's Risk Category, (3) provide an opportunity for currently participating entities to opt out of the TAG program effective on January 1, 2010, and (4) provide a sample disclosure statement for those entities that elect to opt out.

Six-Month Extension

The final rule extends the TAG program for six months; the TAG program will now expire on June 30, 2010. However, each participating entity will have an opportunity to opt out of the extension. While there is evidence that confidence in the banking system and the economy in general is improving, some additional time is needed in order to provide an orderly phase-out of the program.

Increased Assessment

The final rule imposes an increased assessment and a risk-based fee system on those entities participating in the extension of the TAG program. Beginning on January 1, 2010, a participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly an annualized fee in accordance with its respective Risk Category rating. All institutions that are assigned to Risk Category I of the risk-based premium system will be charged an annualized fee of 15 basis points on their deposits in noninterest-bearing transactions accounts for the portion of the quarter in which they are assigned to Risk Category I. Likewise, institutions in Risk Category II will be charged an annualized fee of 20 basis points, and institutions in either Risk Category III or Risk Category IV will be charged an annualized fee of 25 basis points for those portions of the quarter in which they are assigned to the various risk categories. The fee will continue to be collected quarterly in the same manner as provided for in existing regulations.

The fee will apply only to deposit amounts that exceed the existing deposit insurance limit of $250,000, as reported on the quarterly Call Report in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest bearing transaction account into an noninterest bearing savings deposit account as provided in § 370.4(c).

Opt-Out

Although the final rule extends the expiration date of the TAG program for six months, it also provides each participating entity the opportunity to opt out of the program effective on January 1, 2010. The option to opt out is a one-time option, and any decision to opt out is irrevocable. In order to exercise the option to opt out, a participating entity must submit an e-mail to *dcas@fdic.gov* no later than November 2, 2009 that meets all of the requirements of 12 CFR 370.5(g)(2). The opt-out provision allows each participating entity the opportunity to decide whether participation in the extension of the TAG program is desirable based upon on each entity's condition and business plan. In order to ensure that an institution's depositors and the public are aware of an entity's decision to opt out of the extension, the final rule also includes a sample disclosure statement for currently participating institutions that opt out of the extension.

IV. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), the FDIC must prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule,[9] or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[10] For purposes of the RFA analysis or certification, a ''small entity'' is any financial institution with total assets of $175 million or less. For the reasons discussed below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Currently 7,063 IDIs participate in the TAG program, of which approximately 3,688, or 52.2 percent are small entities. Within the universe of small institutions, 1,011, or 27.4 percent did not have TAG eligible deposits as of the June 2009 Report of Condition and Income for banks and the Thrift Financial Report for thrifts (collectively, ''June 2009 Call Reports''); thus, they were not required to pay the 10 basis point fee currently assessed for participation in the TAG program. Assuming these IDIs do not change circumstances and do not opt out, there would be no impact on this group as a result of the fee increase. As to the remaining 2,677 small entities that had TAG eligible deposits as of the June 2009 Call Reports, they have the opportunity to opt out of the extended TAG program. However, assuming these 2,677 small entities remain in the TAG program, the fee increase could have some impact on a substantial number of the remaining participants in the TAG program during the extension period.

Nevertheless, the FDIC has determined that, the economic impact of the Rule on small entities will not be significant for the following reasons. With respect to the fee increase from 10 basis points to 15, 20 or 25 basis points depending upon the institution's risk rating, based on figures from the June 2009 Call Reports, the average fee increase for IDIs participating in the extended TAG program would be $681 for the 6 month extension period, representing 8.2 percent of the average net operating income before taxes for the six months through June 2009. Moreover, the FDIC asserts that the economic benefit of the six-month extension would outweigh the increased fee associated with participation in that the small entities would benefit from the extended time period within which to phase out the TAG program as financial markets continue to stabilize.

With respect to amending the disclosures related to the TAG program, the FDIC asserts that the economic impact on all small entities participating in the program (regardless of whether they pay a fee) would be de minimis in nature and would be outweighed by the economic benefit of the six-month extension.

Accordingly, the Rule would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Final Rule implements Alternative B of the Notice of Proposed Rulemaking, which extends the TAG program through June 30, 2010. Alternative B included disclosure and reporting requirements which are retained in the Final Rule. Specifically, section 370.5(c)(2) allows IDIs participating in the TAG program on October 31, 2009, to opt out of the program effective January 1, 2010. In addition, section 370.5(g)(2)(vi) requires institutions that opt out of the TAG program to disclose to customers that funds in excess of the standard maximum deposit insurance amount will no longer be guaranteed under the TAG program after December 31, 2009. Finally, pursuant to section 370.5(h)(5)(i), institutions participating in the TAG program extension would be required to update any existing disclosures regarding participation in

[9] 5 U.S.C. 604.

[10] 5 U.S.C. 605(b).

the program to reflect the extension of coverage through June 30, 2010.

In the Notice of Proposed Rulemaking, the FDIC expressed an intention to amend its existing TLGP-related information collection (OMB No. 3064–0166) to incorporate the burden associated with the TAG program extension. However, a request for normal clearance of the TLGP information collection, which was initially approved under emergency clearance procedures, was pending before OMB at the time of publication of the Notice of Proposed Rulemaking. To avoid concurrent requests on the same information collection, the FDIC instead, on July 1, 2009, submitted to OMB a request for clearance of the reporting and disclosure requirements in Alternative B as a separate, new information collection. That request is still pending.

The proposed rule document for the TAG program extension requested comment on the estimated paperwork burden. Although, as previously discussed, a number of comments were received on substantive aspects of the proposal, none of the comments addressed the estimated paperwork burden. Therefore, the FDIC has not altered its initial burden estimates. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking and the Final Rule, is as follows:

Title: Temporary Liquidity Guarantee Program.

OMB Number: 3064–0166.

Affected public: Insured depository institutions.

Estimated Number of Respondents:

Opt out of TAG program/Disclosure to customers of discontinuation or TAG program guarantee—3,555.

Disclosure to customers of TAG program extension—3,554.

Frequency of Response:

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee—once.

Disclosure to customers of TAG program extension—once.

Average time per response:

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee—1 hour.

Disclosure to customers of TAG program extension—1 hour.

Estimated Annual Burden:

Opt out of TAG program/Disclosure to customers of discontinuation of TAG program guarantee—3,555 hours.

Disclosure to customers of TAG program extension—3,554 hours.

Total annual burden—7,109 hours.

Comment Request: The FDIC has an ongoing interest in public comments on its collections of information, including comments on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to the FDIC by any of the following methods: By mail to the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; by FAX at (202) 898–8788; or by e-mail to *comments@fdic.gov.* All comments should refer to ''Transaction Account Guarantee Program Extension.'' Copies of comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

C. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. In issuing the proposed rule, the FDIC solicited comments on how to make the proposed regulation easier to understand. No comments addressing that issue were received.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the Rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

E. Small Business Regulatory Enforcement and Fairness Act

The Office of Management and Budget (OMB) has determined that this Final Rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.* As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the Rule may be reviewed.

List of Subjects in 12 CFR Part 370

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

■ For the reasons discussed in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR part 370 as follows:

PART 370—TEMPORARY LIQUIDITY GUARANTEE PROGRAM

■ 1. The authority citation for part 370 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818, 1819(a)(Tenth), 1820(f), 1821(a), 1821(c), 1821(d), 1823(c)(4).

■ 2. Amend § 370.2 as follows:

■ a. Revise paragraph (g); and

■ b. Revise paragraph (h)(4); to read as follows:

§ 370.2 Definitions.

* * * * *

(g) *Participating entity.* The term ''participating entity'' means with respect to each of the debt guarantee program and the transaction account guarantee program,

(1) An eligible entity that became an eligible entity on or before December 5, 2008 and that has not opted out, or

(2) An entity that becomes an eligible entity after December 5, 2008, and that the FDIC has allowed to participate in the program, except that a participating entity that opts out of the transaction account guarantee program in accordance with § 370.5(c)(2) ceases to be a participating entity in the transaction account guarantee program effective on January 1, 2010.

(h) * * *

(4) Notwithstanding paragraph (h)(3) of this section, a NOW account with an interest rate above 0.50 percent as of November 21, 2008, may be treated as a noninterest-bearing transaction account for purposes of this part, if the insured depository institution at which the account is held reduces the interest rate on that account to 0.50 percent or lower before January 1, 2009, and commits to maintain that interest rate at no more than 0.50 percent at all times during the period in which the institution is participating in the transaction account guarantee program.

* * * * *

■ 3. Amend section 370.4 by revising paragraph (a) to read as follows:

§ 370.4 Transaction Account Guarantee Program.

(a) In addition to the coverage afforded to depositors under 12 CFR Part 330, a depositor's funds in a noninterest-bearing transaction account maintained at a participating entity that is an insured depository institution are guaranteed in full (irrespective of the standard maximum deposit insurance amount defined in 12 CFR 330.1(n)) from October 14, 2008 through:

(1) The date of opt-out, in the case of an entity that opted out prior to December 5, 2008;

(2) December 31, 2009, in the case of an entity that opts out effective on January 1, 2010; or

(3) June 30, 2010, in the case of an entity that does not opt out.

* * * * *

■ 4. Amend section 370.5 as follows:
■ a. Revise paragraph (c);
■ b. Revise paragraph (g); and
■ c. Revise paragraph (h)(5), to read as follows:

§ 370.5 Participation.

* * * * *

(c) *Opt-out and opt-in options.*

(1) From October 14, 2008 through December 5, 2008, each eligible entity is a participating entity in both the debt guarantee program and the transaction account guarantee program, unless the entity opts out. No later than 11:59 p.m., Eastern Standard Time, December 5, 2008, each eligible entity must inform the FDIC if it desires to opt out of the debt guarantee program or the transaction account guarantee program, or both. Failure to opt out by 11:59 p.m., Eastern Standard Time, December 5, 2008 constitutes a decision to continue in the program after that date. Prior to December 5, 2008 an eligible entity may opt in to either or both programs by informing the FDIC that it will not opt out of either or both programs.

(2) Any insured depository institution that is participating in the transaction account guarantee program may elect to opt out of such program effective on January 1, 2010. Any such election to opt-out must be made in accordance with the procedures set forth in paragraph (g)(2) of this section. An election to opt out once made is irrevocable.

* * * * *

(g) *Procedures for opting out.*

(1) Except as provided in paragraph (g)(2) of this section, the FDIC will provide procedures for opting out and for making an affirmative decision to opt in using FDIC's secure e-business website, FDICconnect. Entities that are not insured depository institutions will select and solely use an affiliated insured depository institution to submit their opt-out election or their affirmative decision to opt in.

(2) Pursuant to paragraph (c)(2) of this section a participating entity may opt out of the transaction account guarantee program effective on January 1, 2010 by submitting to the FDIC on or before 11:59 p.m., Eastern Standard Time, on November 2, 2009 an email conveying the entity's election to opt out. The subject line of the email must include: ''TLGP Election to Opt Out—Cert. No. ____.'' The email must be addressed to *dcas@fdic.gov* and must include the following:

(i) Institution Name;

(ii) FDIC Certificate number;

(iii) City, State, ZIP;

(iv) Name, Telephone Number and Email Address of a Contact Person;

(v) A statement that the institution is opting out of the transaction account guarantee program effective January 1, 2010; and

(vi) Confirmation that no later than November 16, 2009 the institution will post a prominent notice in the lobby of its main office and each domestic branch and, if it offers Internet deposit services, on its website clearly indicating that after December 31, 2009, funds held in noninterest-bearing transaction accounts will no longer be guaranteed in full under the Transaction Account Guarantee Program, but will be insured up to $250,000 under the FDIC's general deposit insurance rules.

(h) * * *

(5) Each insured depository institution that offers noninterest-bearing transaction accounts must post a prominent notice in the lobby of its main office, each domestic branch and, if it offers Internet deposit services, on its website clearly indicating whether the institution is participating in the transaction account guarantee program. If the institution is participating in the transaction account guarantee program, the notice must state that funds held in noninterest-bearing transactions accounts at the entity are guaranteed in full by the FDIC.

(i) These disclosures must be provided in simple, readily understandable text. Sample disclosures are as follows:

For Participating Institutions

[Institution Name] is participating in the FDIC's Transaction Account Guarantee Program. Under that program, through June 30, 2010, all noninterest-bearing transaction accounts are fully guaranteed by the FDIC for the entire amount in the account. Coverage under the Transaction Account Guarantee Program is in addition to and separate from the coverage available under the FDIC's general deposit insurance rules.

For Participating Institutions That Elect To Opt Out of the Extended Transaction Account Guaranty Program Effective on January 1, 2010

Beginning January 1, 2010 [Institution Name] will no longer participate in the FDIC's Transaction Account Guarantee Program. Thus, after December 31, 2009, funds held in noninterest-bearing transaction accounts will no longer be guaranteed in full under the Transaction Account Guarantee Program, but will be insured up to $250,000 under the FDIC's general deposit insurance rules.

For Non-Participating Institutions

[Institution Name] has chosen not to participate in the FDIC's Transaction Account Guarantee Program. Customers of [Institution Name] with noninterest-bearing transaction accounts will continue to be insured for up to $250,000 under the FDIC's general deposit insurance rules.

(ii) If the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the transaction account guarantee program, for example, an interest-bearing account, the institution must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee with respect to the swept, transferred, or reclassified funds.

* * * * *

■ 5. Amend section 370.7 by revising paragraph (c) to read as follows:

§ 370.7 Assessments for the Transaction Account Guarantee Program.

* * * * *

(c) *Amount of assessment.*

(1) Except as provided in paragraph (c)(2) of this section any eligible entity that does not opt out of the transaction account guarantee program shall pay quarterly an annualized 10 basis point assessment on any deposit amounts exceeding the existing deposit insurance limit of $250,000, as reported on its quarterly Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (each, a ''Call Report'') in any noninterest-bearing transaction accounts (as defined in § 370.2(h)), including any such amounts swept from a noninterest bearing transaction account into a noninterest

bearing savings deposit account as provided in § 370.4(c).

(2) Beginning on January 1, 2010, each participating entity that does not opt out of the transaction account guarantee program in accordance with § 370.5(c)(2) shall pay quarterly a fee based upon its Risk Category rating. An entity's Risk Category is determined in accordance with the FDIC's risk-based premium system described in 12 CFR Part 327. The amount of the fee for each such entity is equal to the annualized, TAG assessment rate for the entity multiplied by the amount of the deposits held in noninterest-bearing transaction accounts (as defined in § 370.2(h) and including any amounts swept from a noninterest bearing transaction account into an noninterest bearing savings deposit account as provided in § 370.4(c)) that exceed the existing deposit insurance limit of $250,000, as reported on the entity's most recent quarterly Call Report. The annualized TAG assessment rates are as follows:

(i) 15 basis points, for the portion of each quarter in which the entity is assigned to Risk Category I;

(ii) 20 basis points, for the portion of each quarter in which the entity is assigned to Risk Category II; and

(iii) 25 basis points, for the portion of each quarter in which the entity is assigned to either Risk Category III or Risk Category IV.

(3) The assessments provided in this paragraph (c) shall be in addition to an institution's risk-based assessment imposed under Part 327.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 26th day of August 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–21034 Filed 8–31–09; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE294; Special Conditions No. 23–234–SC]

Special Conditions: Cessna Aircraft Company, Model 525C; Single Point Refuel/Defuel System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company, model 525C airplane. This airplane will have a novel or unusual design feature(s) associated with a Single Point Refuel/Defuel system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 20, 2009.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329 4090.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2006, Cessna Aircraft Company applied for an amendment to Type Certificate Number A1WI to include the new model 525C (CJ4). The model 525C (CJ4), which is a derivative of the model 525B (CJ3) currently approved under Type Certificate Number A1WI, is a commuter category, low-winged monoplane with ''T'' tailed vertical and horizontal stabilizers, retractable tricycle type landing gear and twin turbofan engines mounted on the aircraft fuselage. The maximum takeoff weight is 16,650 pounds, the V_{MO}/M_{MO} is 305 KIAS/M 0.77 and maximum altitude is 45,000 feet.

The model 525C fuel system will incorporate a Single Point Refuel/Defuel system. The model 525C Single Point Refuel/Defuel system is used to pressure refuel and defuel the left and right wing fuel tanks from a single refuel/defuel adapter. The system is operated by fuel level and positive refuel or negative defuel pressure. This system is similar in design to other part 25 Cessna Citation airplanes and uses many of the same components that are used in these other airplanes. The components for the model 525C refuel/defuel system include a refuel/defuel adapter, a precheck valve, various other check valves, a high level pilot valve, a refuel valve, a defuel valve, and a positive/negative relief valve. Single point refueling is accomplished by connecting the refuel equipment to the refuel/defuel adapter and applying positive pressure. Fuel is directed through a common manifold to each wing tank's fuel shutoff (refuel) valve. Single point defueling is accomplished by connecting defuel equipment to the refuel/defuel adapter and applying negative pressure. Defueling is controlled by fuel level and negative pressure from the defuel equipment.

The incorporation of a pressure defueling system was not considered when 14 CFR part 23 was created and there are no applicable certification requirements for this novel and unusual design feature. Pressure defueling systems are more common on part 25 airplanes, and the applicable certification requirements are contained in 14 CFR part 25, § 25.979(e), which states: ''The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.'' With the pressure defueling system design incorporated on the model 525C, it is necessary to apply a special condition to this novel and unusual design feature.

Type Certification Basis

Under the provisions of § 21.101, Cessna Aircraft Company must show that the model 525C meets the applicable provisions of the regulations incorporated by reference in Type Certificate Number A1WI or the applicable regulations in effect on the date of application for the change to the model 525B. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' In addition, the certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special condition adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations in 14 CFR part 23 do not contain adequate or appropriate safety standards for the model 525C because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model 525C must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that

incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The model 525C will incorporate the following novel or unusual design features: A single point refuel/defuel system.

Discussion of Comments

Notice of proposed special conditions No. 23–09–01–SC for the Cessna Aircraft Company, model 525C airplanes was published in the **Federal Register** on April 15, 2009 (74 FR 17438). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the model 525C. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Cessna Aircraft Company, Model 525C is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Aircraft Company, model 525C airplanes.

1. SC25.979(e)

The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.

Issued in Kansas City, Missouri, on August 20, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21056 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1119

Civil Penalty Factors

AGENCY: Consumer Product Safety Commission.

ACTION: Interim final interpretative rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (''CPSIA''), requires the Consumer Product Safety Commission (''Commission'') to issue a final rule providing its interpretation of the civil penalty factors found in the Consumer Product Safety Act (''CPSA''), the Federal Hazardous Substances Act (''FHSA''), and the Flammable Fabrics Act (''FFA''), as amended by section 217 of the CPSIA. These statutory provisions require the Commission to consider certain factors in determining the amount of any civil penalty. The Commission is issuing its interpretation of the statutory factors.

DATES: This rule is effective September 1, 2009. Comments must be received October 1, 2009.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0068, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written comments in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rule. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa V. Hampshire, Attorney, Division of Enforcement and Information, Office of the General Counsel at 301–504–7631, *mhampshire@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The CPSIA specifies that the Commission, by August 14, 2009, must issue a final regulation providing its interpretation of civil penalty factors in section 20(b) of the CPSA, section 5(c)(3) of the FHSA, and section 5(e)(2) of the FFA.[1] This rule interprets the factors in section 20(b) of the CPSA, section 5(c)(3) of the FHSA and section 5(e)(2) of the FFA, and describes other factors the Commission may consider in evaluating the amount of a civil penalty to be sought for knowing violations of the prohibited acts found in section 19 of the CPSA, section 4 of the FHSA, and section 5 of the FFA. The statutory factors the Commission is required to consider in determining the amount of a civil penalty to seek are: The nature, circumstances, extent and gravity of the violation, including the nature of the product defect, the severity of the risk

[1] The Commission voted 3–0–1 to publish this interim final rule, with changes, in the **Federal Register**. Chairman Inez M. Tenenbaum and Commissioners Thomas H. Moore and Robert Adler voted to publish the notice with changes. Commissioner Anne Northup abstained from the voting. Commissioner Nancy Nord voted not to approve the publication. Chairman Tenenbaum and Commissioners Moore, Northup, and Nord issued statements, and their statements can be found at *http://www.cpsc.gov/about/cpsia/sect217.html.*

of injury, the occurrence or absence of injury, the number of defective products distributed, the appropriateness of the penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.

The statutory factors the Commission is required to consider in determining the amount of a civil penalty to seek are the same factors identified in section 20(c) of the CPSA, section 5(c)(4) of the FHSA, and section 5(e)(3) of the FFA for determining whether a civil penalty may be compromised by the Commission. These statutory provisions instruct the Commission to consider the following factors in determining the amount of a compromised penalty and whether it should be remitted or mitigated by the Commission: the nature, circumstances, extent and gravity of the violation, including the nature of the product defect,[2] the severity of the risk of injury, the occurrence or absence of injury, the number of defective products distributed,[3] the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses and such other factors as appropriate. The Commission will apply its interpretation to these statutory terms in determining whether and in what amounts any penalties may be compromised.

As set forth in section 217(a)(4) of the CPSIA, new penalty amounts specified in section 217(a) of the CPSIA take effect on the date that is the earlier of the date on which a final rule providing the Commission's interpretation of penalty factors is issued or on August 14, 2009 (one year after the date of enactment of the CPSIA). Under the amendments, the maximum penalty amounts increase from $8,000 to $100,000 for each knowing violation under the CPSA, FHSA, and FFA. Maximum penalty amounts for any related series of violations increase from $1,825,000 to $15,000,000.

B. Prior Proposal on Civil Penalty Factors

On July 12, 2006, the Commission published a proposed interpretative rule (71 FR 39248) that identified additional factors to be considered in assessing and compromising civil penalties under sections 20(b) and (c) of the CPSA. The factors identified in the proposed rule were in addition to those already required to be considered under section 20(b) and (c) of the CPSA in evaluating the appropriateness and amount of a civil penalty. The Commission invited comment on whether the Commission and staff should consider, as appropriate, one or more of the following factors in determining the appropriateness and amount of a civil penalty: (1) A firm's previous record of compliance with CPSA requirements; (2) timeliness of a firm's response to relevant information; (3) safety and compliance monitoring; (4) cooperation and good faith; (5) economic gain from any delay or noncompliance with CPSC safety or reporting requirements; (6) a product's failure rate; and (7) any other pertinent factors. The comment period closed August 11, 2006. The Commission received four comments.

C. CPSIA Requirements

The enactment of the CPSIA superseded the proposed rule by requiring that the Commission provide its interpretation of the enumerated statutory factors under section 20(b) of the CPSA, section 5(c)(3) of the FHSA, and section 5(e)(2) of the FFA. The CPSIA also indicated that under the CPSA, FHSA, and FFA the Commission should consider the nature, circumstances, extent, and gravity of the violation in determining the appropriate penalty amount. The statute provides examples of elements that should go into that consideration. The CPSIA modified the factor of appropriateness of the penalty in relation to the size of the business of the person charged by requiring that this factor include a consideration of how to mitigate undue adverse economic impacts on small businesses. This small business analysis element was added to the CPSA and FHSA but not added to the FFA factor. The Commission will consider the undue adverse economic impacts on small businesses as another appropriate factor under the FFA. The CPSIA also added to the CPSA, FHSA, and FFA a new catch-all statutory factor ''other factors as appropriate'' for consideration. The effect of the CPSIA amendments was noted in the Fall 2008 Current Regulatory Plan and the Unified Agenda (RIN: 3041–AC40) by stating that the proposed rule would be withdrawn. In the **Federal Register** of August 26, 2009 (74 FR 43084), the Commission withdrew the July 12, 2006, notice of proposed rulemaking (71 FR 39248).

On November 18, 2008 the Commission staff posted a notice on the Commission Web site inviting comment on information the Commission should address in considering the amended statutory factors under the CPSA, FHSA, and FFA as outlined below:

CPSA (15 U.S.C. 2069(b))	FHSA (15 U.S.C. 1264(c)(3))	FFA (15 U.S.C. 1194(e)(2))
The nature, circumstances, extent, and gravity of the violation, including	The nature, circumstances, extent, and gravity of the violation, including	The nature, circumstances, extent, and gravity of the violations,
the nature of the product defect,	the nature of the substance,	
the severity of the risk of injury,	the severity of the risk of injury,	the severity of the risk of injury,
the occurrence or absence of injury,	the occurrence or absence of injury,	the occurrence or absence of injury,
the number of defective products distributed,	the amount of substance distributed,	
the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses,	the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses,	the appropriateness of such penalty in relation to the size of the business of the person charged,
and such other factors as appropriate	and such other factors as appropriate	and such other factors as appropriate

The Commission staff also invited comment on what other factors are appropriate to consider in penalty determinations including: (1) A previous record of compliance; (2) timeliness of response; (3) safety and compliance monitoring; (4) cooperation and good faith; (5) economic gain from noncompliance; (6) product failure rate;

[2] This factor applies only to the CPSA. The FHSA factor is ''the nature of the substance.'' The FFA has no comparable separate factor apart from the nature, circumstances extent and gravity of the violation.

[3] The FHSA factor is the ''amount of the substance.''

and (7) what information the Commission should consider in determining how to mitigate the adverse economic impact of a particular penalty on a small business. The Commission staff also invited comment on whether it should develop a formula or matrix for weighing any or all of the various factors and what criteria it should use in any weighting formula or matrix. The Commission received 16 comments in response to the 2008 Web site notice.

D. Discussion

1. What Are the Requirements for Imposition of Civil Penalties?

The determination of the amount of any civil penalty to seek and/or compromise should allow for maximum flexibility within an identified framework. The CPSIA requirement for the Commission to interpret the civil penalty factors gives transparency to the regulated community about the framework the Commission will use to guide its penalty calculations in the enforcement process and may provide incentives for greater compliance. The changes made by various CPSIA provisions to the CPSA, FHSA, and FFA, including those to the CPSA prohibited acts and the addition of new prohibited acts, present the regulated community with many new compliance challenges.

Any proposed civil penalty determination is based first on a violation of a prohibited act under the CPSA, FHSA, or FFA. Civil penalties may then be sought against any person who ''knowingly violates'' section 19 of the CPSA, section 4 of the FHSA or a regulation or standard under section 4 of the FFA. The term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), section 5(c)(5) of the FHSA, 15 U.S.C. 1264(c)(5), and section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1) to mean the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. Since its enactment in 1973, the CPSA always contained a civil penalty provision; however, until 1990, the FHSA and FFA did not contain comparable provisions for civil penalties. Under the FFA, the Commission had to seek civil penalties under the Federal Trade Commission Act, using the authorities under that provision. The FHSA had no civil penalty provision. The Consumer Product Safety Improvement Act of 1990, Public Law 101–608, 104 Stat. 3110, November 16, 1990, amended section 5 of the FHSA and section 5 of the FFA giving the Commission authority to seek civil penalties for knowing violations of the prohibited acts under those Acts. If a penalty cannot be compromised by the Commission, the Commission will seek to commence an action in Federal Court to obtain a penalty. *See, Advance Machine Co.* v. *Consumer Product Safety Commission,* 666 F.2d 1166 (8th Cir. 1981); *Athlone Industries, Inc.* v. *Consumer Product Safety Commission* (DC Cir. 1983).

2. How do the CPSIA Amendments to the CPSA's Prohibited Acts Affect Civil Penalties?

In the past, the majority of civil penalties for prohibited acts were imposed either for a knowing failure to furnish information required by section 15(b) of the CPSA, or for regulatory violations under the CPSA, FHSA, or FFA. The CPSIA amended these three statutes to strengthen the Commission's enforcement ability and allow for more uniform enforcement under the CPSA, where applicable.

The new amendments expand the acts prohibited under the CPSA and give the Commission the ability to enforce violations of the FHSA and FFA as prohibited acts under the CPSA. Thus, the amended CPSA now prohibits the sale, offer for sale, distribution in commerce, or importation into the United States of any consumer product, or other product or substance that is regulated under the CPSA or any other Act enforced by the Commission, that is not in conformity with an applicable consumer product safety rule under the CPSA, or any similar rule, regulation, standard, or ban under any other Act enforced by the Commission. 15 U.S.C. 2068(a)(1).

The CPSA, as amended, adds a new prohibited act for the sale, manufacture, distribution, or importation of products subject to a voluntary corrective action taken by the manufacturer, in consultation with the Commission, and publicly announced by the Commission or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action. 15 U.S.C. 2068(a)(2)(B).

The CPSA, as amended, broadens the prohibited act for the sale, offer for sale, manufacture for sale, or distribution or importation of any consumer product or other product or substance subject to a section 15 mandatory recall order to include products subject to a section 12 order. A section 15 order is imposed in an adjudicative proceeding to declare a product a ''substantial product hazard'' under section 15 of the CPSA, 15 U.S.C. 2064. A section 12 order, which may include a mandatory order requiring notification to purchasers and repair, replacement or refund is one imposed by a District Court after an ''imminent hazard'' proceeding under section 12 of the CPSA, 15 U.S.C. 2061.

The amended prohibited acts section of the statute is also broadened to include the sale, offer for sale manufacture for sale, distribution in commerce or importation into the United States of a banned hazardous substance under the FHSA as an act prohibited under the CPSA. 15 U.S.C. 2068(a)(2)(D).

The CPSA prohibited act in section 19(a)(6) of the CPSA relating to certification under section 14 of the CPSA is newly expanded to make the failure to furnish a certificate required by any other Act enforced by the Commission, a prohibited act under the CPSA. This prohibited act now also references a new tracking label requirement of section 103 of the CPSIA by specifying that the failure to comply with any requirement of section 14 includes the failure to comply with the requirement for tracking labels or any rule or regulation promulgated under section 14.

The CPSA statutory language has also been expanded to include a new prohibited act for the sale, offer for sale, distribution in commerce or importation into the United States of any consumer product containing an unauthorized third party certification mark. 15 U.S.C. 2068(a)(12).

Misrepresentations to Commission officers or employees about the scope of consumer products subject to recall or material misrepresentations in the course of an investigation under any act enforced by the Commission also is a new prohibited act under the CPSA. 15 U.S.C. 2068(a)(13).

In addition, the CPSA adds as a new prohibited act, the exercise or attempt to exercise undue influence on a third party conformity assessment body that tests products for compliance under laws administered by the Commission. 15 U.S.C. 2068(a)(14).

The CPSIA adds to the Commission's export prohibition authority section 19(a)(15) of the CPSA that makes it illegal to export from the United States for purposes of sale any consumer product or other product or substance (other than the export of a product or substance permitted by the Secretary of the Treasury under section 17(e) of the CPSA) that is subject to Court- or Commission-ordered recall or that is banned under the FHSA or subject to voluntary recall announced by the Commission. 15 U.S.C. 2068(a)(15).

The CPSIA also adds a new prohibited act that makes it illegal to violate a Commission order issued under new section 18(c) of the CPSA, which allows the Commission to prohibit export for sale of any consumer product not in conformity with an applicable consumer product safety rule. 15 U.S.C. 2068(a)(16).

3. Should Penalties be Sought for Violations that do not Involve Evidence of ''Bad Intentions'' or ''Ill Will?''

Some commenters stated that the Commission should reserve seeking penalties only for the most egregious and dangerous situations and that most violations do not involve bad intentions or ill will.

The CPSA defines ''knowingly'' as actual knowledge or presumed knowledge based on knowledge attributed to a reasonable person acting in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representation. Since the knowledge requirements in the CPSA, FHSA, and FFA include presumed knowledge, as well as actual knowledge, the Commission declines to follow the commenters' suggestion to seek a penalty only where there is evidence of bad intentions or ill will. To follow the commenters' position to impose penalties only where there is knowing and willful conduct would read the ''presumed knowledge'' element out of the ''knowing'' definition in the statute.

4. Should the Commission Implement a Matrix or Formula for Computing Penalty Amounts?

All but two commenters rejected the concept of a penalty matrix or formula for use in the assessment of civil penalties. Commenters opposed to such a matrix or formula highlighted the difficulty of applying any formula in a particular circumstance as too rigid an approach that would not take into consideration information that might be important to consider in one instance of a penalty but not in another. One commenter suggested that if the Commission reduced its penalty formulation to a matrix it would encourage regulated parties to calculate the cost and risk of prohibited conduct and not to follow the statutory requirements.

The Commission declines to follow a formulaic or matrix approach to penalty assessment or to otherwise state in the regulation any specific circumstances that will warrant a certain penalty amount but has instead provided guidance about what factors may influence the Commission's determination under the various statutory and other enumerated factors. Importantly, in an individual case, the Commission would review the facts and circumstances surrounding the violations and the proposed assessment of penalties in light of the factors and framework described in the rule. Therefore, the rule does not contain a matrix or formula for assigning specified amounts to the various factors in this notice. Specific considerations under each factor are discussed below.

5. How Does the New Rule Interpret the Civil Penalty Factors?

A. Section 1119.1—Purpose

Section 1119.1 describes the purpose of new Part 1119 ''Civil Penalty Factors,'' explaining that it is the Commission's interpretation of the statutory civil penalty factors set forth in the Consumer Product Safety Act (15 U.S.C. 2051–2089), Federal Hazardous Substances Act (15 U.S.C. 1261–1278), and the Flammable Fabrics Act (15 U.S.C. 1191–1204).

B. Section 1119.2—Applicability

Section 1119.2 explains that the part applies to all civil penalty determinations that the Commission proposes to seek or compromise for knowing violations of the prohibited acts under the CPSA, the FHSA, or the FFA.

C. Section 1119.3—Definitions

Section 1119.3 defines certain terms used in the rule. For example, the term ''product defect'' is broadly defined to cover a product or substance associated with a prohibited act under the CPSA, FHSA or FFA as well as to include the meaning of defect as referenced in the CPSA and the Commission definition of defect at 16 CFR 1115.4. The term ''violator'' would define any legally responsible party who committed a knowing violation of a prohibited act under the CPSA, FHSA or FFA. The rule explains that the definitions apply for purposes of this rule.

D. Section 1119.4(a)(2)—Nature, Circumstances, Extent, and Gravity of the Violation

One commenter observed that Congress amended the CPSIA adding this general factor in addition to the enumerated statutory factors to clarify its intention that the Commission adopt a holistic assessment of all relevant information for penalty determinations rather than place undue emphasis on one or more specific factors.

The Commission agrees that this language allows the Commission to consider the totality of the circumstances surrounding a violation while recognizing that depending upon the case, the significance and importance of each factor may vary. The Commission also believes that this particular factor allows for the consideration of the seriousness and extent of a particular violation that may not otherwise be considered with respect to the other enumerated statutory factors. Therefore, in each case, the Commission will continue to look at the enumerated statutory factors, as well as other factors (described in paragraph J below) that the Commission may determine are appropriate, and consider all of the factors in determining the civil penalty amount.

E. Section 1119.4(a)(3)—Nature of the Product Defect

The Commission will consider, under this provision, where appropriate and applicable in each particular case, the nature of the hazard presented by the product for which a penalty is sought. The Commission considers this factor broadly as applying to products or substances that may in fact contain a defect which could create a substantial product hazard (as defined and explained in 16 CFR 1115.4), to products which present a hazard because of a violation of a rule, regulation, standard or ban under the CPSA, FHSA, and FFA, as well as any other violation of a prohibited act and how the nature of those violations relate to the underlying products or substances. Therefore, with respect to this factor, a proposed penalty could involve a prohibited act violation, such as a reporting failure under section 15(b) of the CPSA or a failure to comply with any consumer product safety rule under the CPSA, or any similar rule, regulation, standard or ban under any other act enforced by the Commission. A penalty also could involve any other prohibited act, and the Commission may examine its relation to the underlying product or substance and the prohibited act. Under this factor, the Commission could consider, as appropriate and where the business has reported in a timely fashion under section 15, information about the complexity of identifying a particular product hazard.

Two commenters suggested that the Commission should evaluate violations of regulatory standards by distinguishing those that do not involve actual risk of harm, but rather the potential risk of harm, differently than those that do involve real potential for significant injury.

The Commission declines to accept the suggestion that it distinguish any violations of regulatory standards, rule,

or bans in this manner. The promulgation of a mandatory regulation by the Commission, or by Congress when they enact statutory bans and standards, carries with it a corresponding determination that the standard is necessary to address an unreasonable risk of injury presented by the product included within its scope. Violation of such a statutory provision or Commission regulation presents a risk to consumers that has previously been determined to be addressed by compliance with the statute or regulation. If the commenters' suggestion were followed, the Commission would be classifying certain mandatory standards as more important than others. In addition, the comment does not account for the fact that the Commission can seek penalties for other prohibited act violations (in addition to knowing violations of mandatory rules, standards or bans).

F. Section 1119.4(a)(4)—Severity of the Risk of Injury

The Commission is to be guided by its discussion of the severity of the risk at 16 CFR 1115.12, as appropriate, in evaluating a particular penalty.

One commenter noted that penalties should not be assessed for risks of minor or moderate injury.

The Commission declines to follow this suggestion. However, the rule indicates that the Commission may, in addition to considering information about injury potential and the seriousness of the potential injuries, consider the likelihood of injury occurring. In assessing the severity of the risk, the Commission may also consider the intended or reasonably foreseeable use or misuse of the product, and the population group exposed to the risk (e.g. children, elderly, handicapped.)

G. Section 1119.4(a)(5)—The Occurrence or Absence of Injury

The Commission received several comments suggesting that it should not seek a penalty where the information the Commission evaluates reveals that the violation involved no injury or only minor injuries have occurred.

The Commission declines to follow this suggestion because a product may present a serious risk to consumers due to a failure to comply with a mandatory standard or other prohibited act even though no actual injuries have occurred. Therefore, the Commission states in the rule that it would consider under this factor whether injuries have or have not occurred.

H. Section 1119.4(a)(6)—The Number of Defective Products Distributed

Under this provision, the Commission is required to consider the actual number of defective products or amount of substances distributed in commerce. The Commission recognizes, as some commenters pointed out, that the actual number of defective products in consumers' hands may be different than the number of defective products distributed. However, the statutory language makes no distinction between those defective products that consumers receive and those defective products distributed in commerce. Therefore, the Commission chooses not to make any such distinction in any evaluation of information under this factor. The rule reflects this consideration.

I. Section 1119.4(a)(7)—The Appropriateness of Such Penalty in Relation to the Size of the Business of the Person Charged, Including How To Mitigate Undue Adverse Economic Impacts on Small Businesses

The Commission is required to consider the size of a business in relation to the amount of the proposed penalty. This factor reflects the relationship between the size of the business of the person charged and the deterrent effect of civil penalties. In considering business ''size,'' the Commission may look to several factors, including the firm's number of employees, net worth, and annual sales. The Commission may be guided, where appropriate, by any relevant financial factors to help determine a violator's ability to pay a proposed penalty including:

- Liquidity factors—factors that help measure a violator's ability to pay its short-term obligations;
- Solvency factors—factors that help measure a violator's ability to pay its long-term obligations; and
- Profitability factors—factors that measure a violator's level of return on investment

The Commission is aware that penalties may have adverse economic consequences on violators, including small business violators. The statute requires the Commission to consider how to mitigate the adverse economic consequences on small business violators *only* if those consequences would be ''*undue.*'' What the Commission considers to be ''undue'' will vary based upon the violator's business size and financial condition as well as the nature, circumstances, extent and gravity of the violation(s). When considering how to mitigate *undue* adverse economic consequences, the Commission may also follow its Small Business Enforcement Policy set forth at 16 CFR 1020.5. In determining a small business violator's ability to pay a proposed penalty, the Commission may be guided, where appropriate, by the financial factors set forth above.

J. Section 1119.4(b)—Other Factors as Appropriate

Congress clarified in the CPSIA that the Commission does have the ability to consider factors in addition to the ones enumerated in the Act in individual cases, as appropriate. Both the Commission and the violator are free to raise any other factors they believe are relevant in determining an appropriate civil penalty amount. Additional factors which may be considered in an individual case include, but are not limited to, the following:

- *Safety/Compliance Program and/or System:* The Commission may consider, for example, whether a violator had at the time of the violation, a reasonable program/or system for collecting and analyzing information related to safety issues, including incident reports, lawsuits, warranty claims, and safety-related issues related to repairs or returns; and whether a violator conducted adequate and relevant premarket and production testing of the product(s) at issue.
- *History of Noncompliance:* The Commission may consider if the violator has a history of noncompliance with the CPSC and whether a higher penalty should be assessed for repeated noncompliance.
- *Economic Gain from Noncompliance:* The Commission may consider whether a firm benefitted economically from a delay in complying with statutory and regulatory requirements.
- *Failure of the violator to respond in a timely and complete fashion to the Commission's requests for information or remedial action:* The Commission may consider whether a violator's failure to respond in a timely and complete fashion to requests for information or for remedial action should increase the amount of the penalty.

Which, if any, additional factors the Commission considers in determining an appropriate penalty amount, including but not limited to those listed above, will be unique to each case. In all civil penalty matters, any additional factors beyond those enumerated in the statute that the Commission takes into consideration for purposes of determining an appropriate civil penalty amount will be made known to and discussed with the violator.

M. Section 1119.5—Enforcement Notification

Section 1119.5 of the rule sets forth a notification provision that has been informally followed by the Commission in determining the amount of a civil penalty to seek or compromise for knowing violations of the prohibited acts.

E. Immediate Effective Date

The Commission must issue a final rule, in accordance with the procedures set forth at 5 U.S.C. 553 of the Administrative Procedure Act, by August 14, 2009, providing its interpretation of the penalty factors in section 20(b) of the CPSA, section 5(c)(3) of the FHSA, and section 5(e)(2) of the FFA. Maximum civil penalty amounts are increasing on August 14, 2009. Therefore, the Commission proposes that any final rule resulting from this rulemaking become effective upon publication. The rule is interpretative and does not impose obligations on regulated parties beyond those imposed by the CPSA, FHSA, and FFA. Therefore, there is no need to provide a delayed effective date in order to allow for regulated parties to prepare for the rule.

F. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601- 612, directs agencies to consider the potential impact of regulations on small business and other small entities. However, the RFA does not apply to rulemaking that is not subject to the notice and comment requirement of the Administrative Procedure Act, 5 U.S.C. 553. Interpretative rules, such as the one issued by this notice, are not subject to the notice and comment requirement. Accordingly, neither an initial nor a final regulatory flexibility analysis is required for this rule.

G. Paperwork Reduction Act

The rule does not impose any information collection requirements. Rather it describes the statutory civil penalty factors and how the Commission interprets those factors. Accordingly, it is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

H. Environmental Considerations

The Commission's regulations at 16 CFR 1021.5(a) provide that there are no CPSC actions that ordinarily produce significant environmental effects. The rule does not fall within the categories in 16 CFR 1021.5(b) of CPSC actions that have the potential for producing environmental effects. The rule does not have any potential for adversely affecting the quality of the human environment. Council of Environmental Quality regulations at 40 CFR 1508.18(a) provide that agency actions subject to environmental review ''do not include bringing judicial or administrative enforcement actions.'' Therefore, no environmental assessment or environmental impact state is required.

List of Subjects in 16 CFR Part 1119

Administrative practice and procedure, Business and Industry, Consumer protection, Reporting and recordkeeping requirements.

■ Accordingly, the Commission amends title 16 of the Code of Federal Regulations by adding a new Part 1119 to read as follows:

PART 1119—CIVIL PENALTY FACTORS

Sec.
1119.1 Purpose.
1119.2 Applicability.
1119.3 Definitions.
1119.4 Factors considered in determining civil penalties.
1119.5 Enforcement notification.

Authority: 15 U.S.C. 2058, 2063, 2064, 2067(b), 2068, 2069, 2076(e), 2084, 1261, 1263, 1264, 1270, 1273, 1278, 1191, 1192, 1193, 1194, 1195, 1196.

§ 1119.1 Purpose.

This part sets forth the Consumer Product Safety Commission's (Commission) interpretation of the statutory factors considered in determining the amount of civil penalties the Commission may seek or compromise.

§ 1119.2 Applicability.

Application. This part applies to all civil penalty determinations the Commission may seek or compromise under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051–2089), the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261–1278), and the Flammable Fabrics Act (FFA) (15 U.S.C. 1191–1204). Any person who knowingly violates a prohibited act set forth in section 19 of the CPSA, section 4 of the FHSA, or section 5(e) of the FFA is subject to a civil penalty.

§ 1119.3 Definitions.

For purposes of this rule the following definitions apply:

(a) *Product defect* means a product or substance that is associated with a prohibited act under the CPSA, FHSA, or FFA, including the meaning of defect as referenced in the CPSA and defined in Commission regulations at 16 CFR 1115.4. Where applicable and where the term ''number of defective products distributed'' is used it shall include ''amount of substance distributed'' for purposes of violations under the FHSA.

(b) *Violation* means a knowing violation, as defined in the CPSA, FHSA, or FFA of any prohibited act found in section 19 of the CPSA, section 4 of the FHSA, or section 5 of the FFA.

(c) *Violator* means any manufacturer, importer, distributor or retailer or any other legally responsible party who committed a knowing violation of a prohibited act under the CPSA, FHSA, or FFA and is thus subject to penalties.

§ 1119.4 Factors considered in determining civil penalties.

(a) *Statutory Factors.* (1) Section 20(b) of the CPSA, section 5(c)(3) of the FHSA and section 5(e)(2) of the FFA specify factors considered by the Commission in determining the amount of a civil penalty to be sought upon commencing an action for knowing violations of the prohibited acts section of each act. These factors are:

(i) *CPSA (15 U.S.C. 2069(b)).* The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the product defect;

(B) The severity of the risk of injury;

(C) The occurrence or absence of injury;

(D) The number of defective products distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(ii) *FHSA (15 U.S.C. 1264(c)(3)).* The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the substance;

(B) Severity of the risk of injury;

(C) The occurrence or absence of injury;

(D) The amount of substance distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(iii) *FFA (15 U.S.C. 1194(e)(2)).* The nature, circumstances, extent, and gravity of the violations:

(A) The severity of the risk of injury;

(B) The occurrence or absence of injury;

(C) The appropriateness of such penalty in relation to the size of the business of the person charged; and

(D) Such other factors as appropriate.

(2) *The nature, circumstances, extent and gravity of the violation.* Under this factor, the Commission will consider the totality of the circumstances surrounding a violation, including how many provisions of law were violated. The Commission will continue to look at the enumerated statutory factors, as well as other factors (as described in paragraph (b) of this section) that the Commission may determine are appropriate, and consider all of the factors in determining the civil penalty amount.

(3) *Nature of the product defect.* The Commission will consider the nature of the product hazard/substance for which a penalty is sought. A product defect under this factor includes violations for products that contain defects which could create substantial product hazards as referenced in the CPSA and defined and explained in 16 CFR 1115.4; regulatory violations of a rule, regulation, standard or ban; or product hazards presented by any other violation of the prohibited acts of section 19 of the CPSA.

(4) *Severity of the risk of injury.* Consistent with its discussion of severity of the risk at 16 CFR 1115.12, the Commission will consider, among other factors, the potential for serious injury or death (and whether any injury required actual medical treatment including hospitalization or surgery); the likelihood of injury; the intended or reasonably foreseeable use or misuse of the product; and the population at risk (including vulnerable populations such as children, the elderly, or those with disabilities).

(5) *The occurrence or absence of injury.* The Commission will consider whether injuries have or have not occurred with respect to any product associated with the violation.

(6) *The number of defective products distributed.* The Commission will consider the actual number of products or amount of substances imported or placed in the stream of commerce to distributors, retailers, and consumers.

(7) *The appropriateness of such penalty in relation to the size of the business of the person charged including how to mitigate undue adverse economic impacts on small businesses.* (i) The Commission is required to consider the size of a business in relation to the amount of the proposed penalty. This factor reflects the relationship between the size of the business of the person charged and the deterrent effect of civil penalties. In considering business ''size,'' the Commission may look to several factors including the firm's number of employees, net worth, and annual sales. The Commission may be guided, where appropriate, by any relevant financial factors to help determine a violator's ability to pay a proposed penalty including: liquidity factors; solvency factors; and profitability factors.

(ii) The statute requires the Commission to consider how to mitigate the adverse economic impacts on small business violators *only* if those impacts would be ''*undue.*'' What the Commission considers to be ''undue'' will vary based upon the violator's business size and financial condition as well as the nature, circumstances, extent and gravity of the violation(s). When considering how to mitigate undue adverse economic consequences, the Commission may also follow its Small Business Enforcement Policy set forth at 16 CFR 1020.5.

(b) *Other factors as appropriate.* In determining the amount of any civil penalty to be pursued when a knowing violation of the prohibited acts section of the CPSA, FHSA, or FFA has occurred, the Commission may consider, where appropriate, other factors in addition to those listed in the statutes. Both the Commission and the violator are free to raise any other factors they believe are relevant in determining an appropriate penalty amount. Which, if any, additional factors the Commission considers in determining an appropriate penalty amount, including but not limited to those listed above, will be unique to each case. In all civil penalty matters, any additional factors beyond those enumerated in the statute that the Commission takes into consideration for purposes of determining an appropriate civil penalty amount will be made known to and discussed with the violator. Additional factors which may be considered in an individual case include, but are not limited to, the following:

(1) *Safety/Compliance Program and/or System:* The Commission may consider, for example, whether a violator had at the time of the violation, a reasonable program/or system for collecting and analyzing information related to safety issues, including incident reports, lawsuits, warranty claims, and safety-related issues related to repairs or returns; and whether a violator conducted adequate and relevant premarket and production testing of the product(s) at issue.

(2) *History of noncompliance:* The Commission may consider if the violator has a history of noncompliance with the CPSC and whether a higher penalty should be assessed for repeated noncompliance.

(3) *Economic Gain from Noncompliance:* The Commission may consider whether a firm benefitted economically from a delay in complying with statutory and regulatory requirements.

(4) Failure of the violator to respond in a timely and complete fashion to the Commission's requests for information or remedial action: The Commission may consider whether a violator's failure to respond in a timely and complete fashion to requests from the Commission for information or for remedial action should increase the amount of the penalty.

§ 1119.5 Enforcement notification.

A potential violator will be informed in writing that the Commission believes it is subject to a possible civil penalty. The violator will be able to submit evidence and arguments that it is not subject to such a penalty.

Dated: August 19, 2009.

Alberta E. Mills,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. E9–20591 Filed 8–31–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. OSHA–2009–0010]

RIN 1218–AC44

Notice of Initial Approval Determination; Illinois Public Employee Only State Plan

AGENCY: Occupational Safety and Health Administration, Department of Labor (OSHA).

ACTION: Final rule.

SUMMARY: The Illinois Public Employee Only State Plan, a State occupational safety and health plan applicable only to public sector employees (employees of the State and its political subdivisions), is approved as a developmental plan under the Occupational Safety and Health Act of 1970 and OSHA regulations. Under the approved Plan, the Illinois Department of Labor is designated as the State agency responsible for the development and enforcement of occupational safety and health standards applicable to public employment throughout the State. The Occupational Safety and Health Administration (OSHA) retains full authority for coverage of private

sector employees in the State of Illinois as well as for coverage of Federal government employees.

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

FOR FURTHER INFORMATION CONTACT: *Press inquiries:* Contact Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 693–1999.

General and technical inquiries: Contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, OSHA, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–2244 or Fax (202) 693–1671.

SUPPLEMENTARY INFORMATION:

A. Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (the ''Act''), 29 U.S.C. 667, provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a State Plan to the Assistant Secretary of Labor for Occupational Safety and Health (''Assistant Secretary'') documenting the proposed program in detail. Regulations promulgated pursuant to the Act at 29 CFR Part 1956 provide that a State may submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions (''public employees''). State and local government workers are excluded from Federal coverage under the Act and are provided protection only through the vehicle of a State Plan approved pursuant to Section 18 of the Act.

Under these regulations the Assistant Secretary will approve a State Plan for public employees if the Plan provides for the development and enforcement of standards relating to hazards in employment covered by the Plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the OSH Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR Part 1956, Subpart B.

A State Plan for public employees may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1956.10 and 1956.11, if it includes satisfactory assurances by the State that it will take the necessary steps, and establishes an acceptable developmental schedule, to meet the criteria within a three year period (29 CFR 1956.2(b)). The Assistant Secretary may publish a notice of ''certification of completion of developmental steps'' when all of a State's developmental commitments have been met satisfactorily (29 CFR 1956.23; 1902.33 and 1902.34) and the Plan is structurally complete. After certification of a State Plan for public employees, OSHA may initiate a period of at least one year of intensive performance monitoring, after which OSHA may make a determination under the procedures of §§ 1902.38, 1902.39, 1902.40 and 1902.41 as to whether, on the basis of actual operations, the criteria set forth in §§ 1956.10 and 1956.11 for ''at least as effective'' State Plan performance are being applied under the Plan.

B. History of the Present Proceeding

In 1973 the Illinois Industrial Commission and the Illinois Department of Labor obtained OSHA approval of a State Plan for the enforcement of occupational safety and health standards covering private sector workplaces as well as a program for public employees in Illinois. That Plan was approved by the Assistant Secretary on November 5, 1973 (38 FR 30436; 29 CFR 1952.280 *et seq.*). The Plan was subsequently withdrawn effective June 30, 1975 by the State of Illinois under the authority of then Governor Dan Walker after the State was unable to make necessary modifications to its program and statutory authority, and its State funding was withdrawn (40 FR 24523).

Since 1985, the Illinois Department of Labor (IDOL), Safety Inspection and Education Division (SIED), has adopted standards and performed inspections in the public sector (State, county, and municipal employees) as outlined under the provisions of the State's existing enabling legislation: the Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] and the Illinois Health and Safety Act (HSA) [820 ILCS 225]. In 2005, Illinois began working on a Public Employee Only State Plan and submitted a draft Plan to OSHA in May 2006. OSHA's review findings were detailed in various memoranda and other documents, including a May 18, 2007 letter to the Illinois Department of Labor Director Catherine Shannon. OSHA determined that the Illinois statutes, as structured, and the proposed State Plan presented several obstacles to meeting the Federal Public Employee Only State Plan approval criteria in 29 CFR 1956. Amendments to both the Illinois Safety Inspection and Education Act and the Illinois Health and Safety Act were proposed and enacted by the Illinois General Assembly and signed into law by the Governor in 2006 and 2007. The amended legislation provides the basis for establishing a comprehensive occupational safety and health program applicable to public employees in the State.

Illinois formally submitted a revised Plan applicable only to public employees for Federal approval on June 18, 2008. Over the next several months, OSHA worked with Illinois in identifying areas of the proposed Plan which needed to be addressed or required clarification. In response to Federal review of the proposed State Plan, supplemental assurances, and revisions, corrections and additions to the Plan were submitted on April 8, 2009 and May 15, 2009. Further modifications were submitted by the State on June 8, 2009. The revised IDOL/SIED Plan has been found to be conceptually approvable as a developmental State Plan.

The Act provides for funding of up to 50% of the State Plan costs, but longstanding language in OSHA's appropriation legislation further provides that OSHA must fund ''* * * no less than 50% of the costs required to be incurred'' by an approved State Plan. Such Federal funds to support the State Plan must be available prior to State Plan approval. The Omnibus Appropriations Act for Fiscal Year 2009 includes $1.5 million in additional OSHA State Plan grant funds to allow for Department of Labor approval of an Illinois State Plan.

On July 10, 2009, OSHA published notice in the **Federal Register** (74 FR 33189) concerning the submission of the Illinois Public Employee Only State Plan, announcing that initial Federal approval of the Plan was at issue, and offering interested parties an opportunity to review the Plan and submit data, views, arguments or requests for a hearing concerning the Plan. The Illinois Department of Labor similarly published notice of the availability of the State Plan for comment on July 15, 2009 in the *Daily Herald* newspaper in Illinois.

To assist and encourage public participation in the initial approval process, the documents constituting the Illinois State Plan for Public Employees Only are available at *http://*

www.regulations.gov as Docket No. OSHA–2009–0010. Copies of the Illinois State Plan also were maintained and are available for inspection in the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; OSHA's Regional Office in Chicago, Illinois, at 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, IL 60604; and at the Offices of the Illinois Department of Labor, Safety Inspection and Education Division at 1 West Old State Capitol Plaza, 3rd floor, Springfield, IL 62701; 160 North LaSalle Street, Suite C–1300, Chicago, IL 60601; or 2309 West Main Street, Suite 115, Marion IL 62959.

Electronic copies of this notice, as well as news releases and other relevant information, are available on OSHA's Web page at *http://www.osha.gov.*

C. Summary and Evaluation of Comments Received

In response to OSHA's July 10, 2009, **Federal Register** notice, which announced the submission of the Illinois Public Employee Only State Plan and its availability for public comment, nine (9) written public comments were submitted by: (1) Mark Bishop, Deputy Director, Healthy Schools Campaign (Document # OSHA–2009–0010–0024); (2) Linda Gibbons, Certified School Nurse, Illinois Association of School Nurses (Document # OSHA–2009–0010–0028); (3) Brenda McCracken and (4) Patrick Genovese, President, Three Rivers Chapter of the American Society of Safety Engineers (Document # OSHA–2009–0010–0025 and 0026); (5) Lorraine M. Conroy, Associate Professor, Environmental and Occupational Health Sciences, and eight other officials of the University of Illinois, School of Public Health at Chicago (Document # OSHA–2009–0010–0029); (6) Symantha Aydt, School of Labor and Employment Relations, University of Illinois (Document # OSHA–2009–0010–0030 and 0031); (7) Scott D. Miller, Counsel, American Federation of State, County and Municipal Employees, Council 31, Chicago, Illinois (Document # OSHA–2009–0010–0032); (8) C. Christopher Patton, President, American Society of Safety Engineers (Document # OSHA–2009–0010–0034); and (9) John T. Coli, President, Teamsters Joint Council 25 (Document # OSHA–2009–0010–0035).

Mark Bishop, Deputy Director of the Healthy Schools Campaign (exhibit 0024), expressed support for the Illinois PEO State Plan, in particular IDOL's protection of the health and safety of school teachers and staff.

Linda J. Gibbons, Certified School Nurse and member of the Illinois Association of School Nurses (exhibit 0028), also expressed support for the Illinois PEO State Plan.

The comments from Patrick Genovese, President, Three Rivers Chapter of the American Society of Safety Engineers (ASSE) (exhibit 0026), as transmitted by Brenda McCrackin (exhibit 0025), supported the State of Illinois, for its ''* * * intent to establish an Illinois Public Employee Only State Plan'', and the extension of such coverage to all public employees either under Federal standards or through other non-State Plan states following Illinois' example. In addition, Mr. Genovese mentioned efforts ASSE members in Florida have taken to see that public sector workers are protected and the successes that other established State Plans have achieved.

The comments from Lorraine M. Conroy, Associate Professor of Environmental and Occupational Health Sciences at the University of Illinois at Chicago and eight other officials of the University of Illinois, School of Public Health (exhibit 0029), supported approval of the Illinois PEO State Plan. In addition, Ms. Conroy requested clarification in the areas of coverage, the complaint process, discrimination, rule making, penalties, and comprehensive safety and health programs in order to assure that the Illinois program is as effective, or more effective, than Federal OSHA.

Symantha Aydt of the School of Labor and Employment Relations at the University of Illinois (exhibits 0030 and 0031) requested clarifications in several areas, including methods for compelling compliance, the State's voluntary compliance program, and coverage of prisoners and volunteers.

Scott D. Miller, Counsel, American Federation of State, County and Municipal Employees (AFSCME), Council 31 (exhibit 0032), which represents more than 75,000 State government public-service workers as well as ''thousands'' of local government employees in Illinois, supported approval of the Illinois PEO State Plan. However, Mr. Miller, on behalf of AFSCME, requested that the State provide ''a heightened level of assurances'' that it will provide adequate matching funds, that its compliance officers will receive comprehensive training on hazards in the public sector, that it consider expanded use of its first-instance sanction authority, that the independence of its Administrative Law Judges be assured through specific regulations and separation from IDOL's legal department, that procedural rules be developed to implement the right of employees and their representatives to challenge the State's failure to enforce, and that IDOL undertake outreach beyond its poster to inform public employees of their rights and responsibilities under the Plan.

C. Christopher Patton, President, American Society of Safety Engineers (exhibit 0034) on behalf of its 32,000 members nationwide and 1,400 members in Illinois, supported approval of the Illinois PEO State Plan. Mr. Patton also supported the extension of such coverage to all public employees either under Federal standards or through other non-State Plan states following Illinois' example and mentioned efforts ASSE members in Florida have taken to see that public sector workers are protected.

John T. Coli, President, Teamsters Joint Council 25 (exhibit 0035) supported approval of the Illinois PEO State Plan on behalf of the Joint Council and the 22 local unions under its jurisdiction, who collectively represent approximately 50,000 members in Illinois State and municipal governments. Mr. Coli emphasized the need for adequate assurances that Illinois will fund ''a fully trained and adequate staff,'' support for monetary penalties for failure to correct and egregious violations, the importance of the independence of the adjudicatory process, and workers' right to request a hearing regarding the reasonableness of the abatement period.

Several of the commenters requested that the Plan extend coverage to include safety and health protection of students and other non-employee classes. Both Federal OSHA's and State Plans' jurisdiction is statutorily limited to the working conditions of employees and does not extend to coverage of the general public or of students. However, the Illinois PEO State Plan extends coverage to students who are working, such as teaching or research assistants in public colleges and universities. Improved working conditions for public school employees likely result in benefits for students as well.

OSHA has carefully considered the public comments and finds that none of the commenters offered specific facts or observations that would preclude approval of the Illinois State Plan or questioned whether the plan meets the statutory and regulatory criteria for initial approval as a developmental plan. All of the commenters listed above indicated their support for OSHA approval of the Illinois Public Employee Only State Plan. However, included in the public comment are many useful

suggestions for program clarifications and enhancements. OSHA will require the State to address these issues as they develop the key elements of their program during the next three years. No requests for a public hearing were submitted.

D. Review Findings

As required by 29 CFR 1956.2 in considering the granting of initial approval to a Public Employee Only State Plan, OSHA must determine whether the State Plan meets or will meet the criteria in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR 1956.11. Findings and conclusions in each of the major State Plan areas addressed by 29 CFR 1956 are as follows:

(1) Designated Agency

Section 18(c)(1) of the OSH Act provides that a State occupational safety and health program must designate a State agency or agencies responsible for administering the Plan throughout the State (29 CFR 1956.10(b)(1)). The Plan must describe the authority and responsibilities of the designated agency and provide assurance that other responsibilities of the agency will not detract from its responsibilities under the Plan (29 CFR 1956.10(b)(2)). The Illinois Department of Labor is designated by the Illinois Safety Inspection and Education Act [820 ILCS 220] and the Illinois Health and Safety Act [820 ILCS 225] as the sole agency responsible for administering and enforcing the public employee protection program in Illinois. The Illinois Department of Labor, Safety Inspection and Education Division is designated as the agency responsible for the Public Employee Only State Plan. The Plan describes the authority of the Illinois Department of Labor and its other responsibilities. (A separate agency, the Illinois Department of Commerce and Economic Development delivers OSHA's On-Site Consultation program to private sector employers throughout the State.) (Illinois State Plan, pp. 1–3)

(2) Scope

Section 18(c)(6) of the OSH Act provides that the State, to the extent permitted by its law, shall under its Plan establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of the State and its political subdivisions. Only where a State is constitutionally precluded from regulating occupational safety and health conditions in certain political subdivisions may the State exclude such political subdivision employees from further coverage (29 CFR 1956.2(c)(1)). Further, the State may not exclude any occupational, industrial or hazard groupings from coverage under its Plan unless OSHA finds that the State has shown there is no necessity for such coverage (29 CFR 1956.2(c)(2)).

The scope of the Illinois State Plan includes any employee of the State, including members of the General Assembly, members of the various State commissions, persons employed by public universities and colleges, and employees of counties, cities, townships, school districts, municipal corporations, *etc.* No employees of any political subdivision of the State or local government are excluded from the Plan. However, the definition of public employee does not extend to students or incarcerated or committed individuals in public institutions, or volunteers, unless they receive benefits such as health insurance or Workers' Compensation. The Illinois Department of Labor will adopt all Federal OSHA occupational safety and health standards, and the Plan excludes no occupational, industrial or hazard grouping.

Consequently, OSHA finds that the Illinois Plan contains satisfactory assurances that no employees of the State and its political subdivisions are excluded from coverage, and the plan excludes no occupational, industrial or hazard grouping. (Illinois State Plan, p. 2)

(3) Standards

Section 18(c)(2) of the OSH Act requires State Plans to provide for occupational safety and health standards which are at least as effective as Federal OSHA standards. A State Plan for public employees must therefore provide for the development or adoption of such standards and must contain assurances that the State will continue to develop or adopt such standards (29 CFR 1956.10(c); 1956.11(b)(2)(ii)). A State may establish the same standards as Federal OSHA (29 CFR 1956.11(a)(1)), or alternative standards that are at least as effective as those of Federal OSHA (29 CFR 1956.11(a)(2)). Where a State's standards are not identical to Federal OSHA, they must meet the following criteria: they must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1956.11(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1956. 11(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1956.11(b)(2)(vi)); and, must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1956.11(b)(2)(vii)).

In addition, the State Plan must provide for prompt and effective standards setting actions for protection of employees against new and unforeseen hazards, by such means as authority to promulgate emergency temporary standards (29 CFR 1956.11(b)(2)(v)).

Under the Plan's legislation, the Illinois Safety Inspection and Education Act [820 ILCS 220] and the Illinois Health and Safety Act [820 ILCS 225], the Illinois Department of Labor has full authority to adopt standards and regulations and enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions. The procedures for State adoption of Federal occupational safety and health standards include publication of a first and second notice in the *Illinois Register*, opportunity for a public hearing, notification to the Joint Committee on Administrative Rules, etc., in accordance with the Illinois Administrative Procedures Act [5 ICLS 100]. Illinois has adopted State standards identical to Federal occupational safety and health standards as promulgated through September 30, 2005. The State Plan includes a commitment to update all standards within one year after Plan approval. The Plan also provides that future OSHA standards and revisions will be adopted by the State within six months of Federal promulgation in accordance with the requirements at 29 CFR 1953.5.

Under the Plan, the Illinois Department of Labor has the authority to adopt alternative or different occupational safety and health standards where no Federal standards are applicable or where more stringent standards are deemed advisable. Such standards will be adopted in accordance with the State Acts and the Illinois Administrative Procedures Act, which include provisions allowing submissions from interested persons and the opportunity to participate in any hearing for the development, modification or establishment of standards. (Illinois State Plan, pp. 4–6)

The Illinois State Plan also provides for the adoption of Federal emergency temporary standards within 30 days of Federal promulgation. (Illinois State Plan pp. 5–6)

Based on the preceding Plan provisions, assurances, and commitments, OSHA finds the Illinois State Plan to have met the statutory and regulatory requirements for initial plan approval with respect to occupational safety and health standards.

(4) Variances

A State Plan must provide authority for the granting of variances from State standards upon application of a public employer or employers which corresponds to variances authorized under the OSH Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to applications for variances (29 CFR 1956.11(b)(2)(iv)).

Section 4.2 of the Illinois Health and Safety Act [820 ILCS 225] includes provisions for the granting of permanent and temporary variances from State standards to public employers in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance. However, the State's variance procedures at 56 ILAC 350.40 require revision. The State has provided assurances in its developmental schedule that within two years of initial plan approval it will amend its regulations to reflect variance provisions equivalent to those contained in the Federal 29 CFR 1905. (Illinois State Plan pp. 7–8 and 19)

(5) Enforcement

Section 18(c)(2) of the OSH Act and 29 CFR 1956.10(d)(1) require a State Plan to include provisions for enforcement of State standards which are or will be at least as effective in providing safe and healthful employment and places of employment as the Federal program, and to assure that the State's enforcement program for public employees will continue to be at least as effective as the Federal program in the private sector.

(a) Legal Authority. The State must require public employer and employee compliance with all applicable standards, rules and orders (29 CFR 1956.10(d)(2)) and must have the legal authority for standards enforcement (section 18(c)(4)), including compulsory process (29 CFR 1956.11(c)(2)(viii)).

Section 3 of the Illinois Health and Safety Act [820 ILCS 225/3] establishes the duty of public employers to provide a place of employment free of recognized hazards, to comply with the Illinois Department of Labor's occupational safety and health standards, to inform employees of their protections and obligations and provide information on hazards in the workplace. Public employees must comply with all standards and regulations applicable to their own actions and conduct.

(b) Inspections. A State Plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1956.11(c)(2)(i)).

When no compliance action results from inspection of violations alleged by employee complaints, the State must notify the complainant of its decision not to take compliance action by such means as written notification and opportunity for informal review (29 CFR 1956.11(c)(2)(iii)).

Sections 2 and 2.1 of the Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] provide for inspections of covered workplaces, including inspections in response to employee complaints, by the Director of Labor. If a determination is made that an employee complaint does not warrant an inspection, the complainant will be notified in writing of such determination. The complainant will be notified of the results of any inspection in writing and provided a copy of any citation that is issued. Employee complainants may request that their names not be revealed. (Illinois State Plan, pp. 10–11)

(c) Employee Notice and Participation in Inspection. In conducting inspections, the State Plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1956.11(c)(2)(ii)).

The Illinois Safety Inspection and Education Act provides the opportunity for employer and employee representatives to accompany a Department of Labor inspector for the purpose of aiding the inspection. Where there is no authorized employee representative, the inspectors are required to consult with a reasonable number of employees concerning matters of safety and health in the workplace. (820 ILCS 220/2(b)(6))

In addition, the State Plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1956.11(c)(2)(iv)); and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1956.11(c)(2)(vi)).

The Plan provides for notification to employees of their protections and obligations under the Plan by such means as a State poster, required posting of notices of violation, etc. The State has provided assurances in its developmental schedule to update and submit the State poster for posting at all public sector workplaces in the State within one year of initial plan approval. (Illinois State Plan, p. 20)

Section 2.5 of the Illinois Safety Inspection and Education Act authorizes the Director of Labor to issue rules requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents. Information on employee exposure to regulated agents, access to medical and exposure records, and provision and use of suitable protective equipment is provided through State standards which will be updated within one year of plan approval. (Illinois State Plan, p. 13; p. 19)

(d) Nondiscrimination. A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program, including provision for employer sanctions and employee confidentiality (29 CFR 1956.11(c)(2)(v)).

Section 2.2 of the Illinois Safety Inspection and Education Act [820 ILCS 220] provides that a person may not discharge or in any other way discriminate against any employee because the employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to the Acts or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or herself or others of any right afforded by the State Acts.

The SIEA provides that an employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 calendar days after the violation occurs, file a complaint with the Director of Labor alleging the discrimination. The Plan provides that the Director shall investigate such complaints as appropriate and make a determination within 90 days. If the Director determines that the provisions of this

section have been violated, the Director shall bring an action in the circuit court for appropriate relief. (820 ILCS 220/2.2 and Illinois State Plan, p.11)

The Illinois State Plan provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State Acts in terms essentially identical to section 11(c) of the Federal Act.

(e) Restraint of Imminent Danger. A State Plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1956.11(c)(2)(vii)).

Section 2(b)(7)(B) of the Illinois Safety Inspection and Education Act [820 ILCS 220] provides that the Director may file a complaint in the circuit court for appropriate relief, by such means as an order to cease and desist, to restrain any conditions or practices in the workplace which the Director determines, in accordance with the State Acts, are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger could be eliminated through the enforcement process. (Illinois State Plan, p. 10)

(f) Right of Entry; Advance Notice. A State program is required to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the OSH Act and 29 CFR 1956.10(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1956.10(f)).

Section 2(b)(3) of the Illinois Safety Inspection and Education Act [820 ILCS 220] provides that the Director of Labor has the right to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, agent or employee.

Section 2.6(a) of the SIEA prohibits advance notice of inspections. A person who gives advance notice of any inspection to be conducted under the authority of this Act or the Health and Safety Act without authority from the Director of Labor, or his or her authorized representative, commits a Class B misdemeanor. (Illinois State Plan, p. 9)

(g) Citations, Sanctions, and Abatement. A State Plan is expected to have authority and procedures for promptly notifying employers and employees of violations, including proposed abatement requirements, identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards, and for prompt employer notification of any such sanctions. In lieu of monetary penalties as a sanction, a complex of enforcement tools and rights, including administrative orders and employees' right to contest, may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment (29 CFR 1956.11(c)(2)(ix) and (x)).

The Illinois Safety Inspection and Education Act establishes the authority and general procedures for the Director of Labor to promptly notify public employers and employees of violations, abatement requirements, and to compel compliance. The Director of Labor must issue a written order to comply with reasonable promptness, which in no case may be more than six months after the occurrence of any violation. The SIEA provides that when an inspection of an establishment has been made, and the Director of Labor has issued a citation, the employer shall post such citation or a copy thereof at or near the location where the violation occurred. Each citation shall be in writing; describe with particularity the nature of the violation and include a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated; and fix a reasonable time for the abatement of the violation. (820 ILCS 220/2.3)

Although Section 2.3 of the SIEA contains authority for a system of first-instance monetary penalties, in practice it is the State's intent to issue monetary penalties only for failure to correct and egregious violations. The State has discretionary authority for civil penalties of not more than $10,000 for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to $1,000 per violation and failure-to-correct violations may be assessed a penalty of up to $1,000 per violation per day. In addition, any public employer who willfully violates any standard, rule, or order can be charged by the Attorney General with a Class 4 felony if that violation causes death to any employee. (Illinois State Plan, p. 11–12)

The State has given an assurance that it will revise its regulations regarding inspections, citations, and proposed penalties to be equivalent to 29 CFR 1903 within two years of plan approval. (Illinois State Plan, p. 19)

(h) Contested Cases. A State Plan must have authority and procedures for employer contest of violations alleged by the State, penalties/sanctions and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1956.11(c)(2)(xi)).

Public employers or their representatives who receive a citation or a proposed penalty may within 15 working days contest the citation, proposed penalty and/or abatement period and request a hearing before an Administrative Law Judge (ALJ) on behalf of the Director. Any public employee or representative may within 15 working days request a hearing before an ALJ regarding the reasonableness of the abatement period. Informal review prior to contest may also be requested at the division level. The ALJ's decision is subject to appeal to the courts. (Illinois State Plan, pp. 12–13)

Although the Illinois Plan does not include an independent authority for review of contested cases, and the Director technically has statutory responsibility for both the enforcement and the appeals process (820 ILCS 220/2.4), in practice, Administrative Law Judges hear contested cases without any oversight or review by the Director. ALJ's decisions are subject to judicial review under the Illinois Administrative Review Law. (56 ILCS 350.120). Within one year of plan approval, the State will make appropriate changes to its regulations and procedures to ensure the separation of these functions and the independence of the adjudicatory process. The Director of Labor will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested.

The State's developmental schedule also includes an assurance that it will revise its regulations regarding the review system for contested cases to be equivalent to 29 CFR 2200 within two years of plan approval. (Illinois State Plan, p. 19)

(i) Enforcement Conclusion. Accordingly, OSHA finds that the enforcement provisions of the Illinois State Plan as described above meet or will meet the statutory and regulatory requirements for initial State Plan approval.

(6) Staffing and Resources

Section 18(c)(4) of the OSH Act requires State Plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1956.10(g), one factor which OSHA must consider in

considering a plan for initial approval is whether the State has or will have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The Illinois State Plan (p. 17; pp. 19–20) provides assurances of a fully trained, adequate staff, including 11 safety and 3 health compliance officers for enforcement inspections, and 3 safety and 2 health consultants to provide consultation, training and education services in the public sector. The State has a currently authorized staff of 8 safety and 3 health compliance officers who, in addition to inspections, also perform duties equivalent to OSHA's on-site consultation program. The Plan provides assurances that within three years of plan approval no staff will have dual roles, and the State will have a fully trained, adequate, and separate staff of compliance officers for enforcement inspections, and consultants to perform consultation services in the public sector. As new staff members are hired they will perform either enforcement or consultation functions. The compliance staffing requirements (or benchmarks) for State Plans covering both the private and public sectors are established based on the ''fully effective'' test established in *AFL–CIO* v. *Marshall,* 570 F.2d 1030 (DC Cir. 1978). This staffing test, and the complicated formula used to derive benchmarks for complete private/public sector Plans, are not intended, nor are they appropriate, for application to the staffing needs of public employee only Plans. However, the State has given satisfactory assurance in its Plan that it will meet the requirements of 29 CFR 1956.10 for an adequately trained and qualified staff sufficient for the enforcement of standards. (Illinois State Plan, p. 17; pp. 19–20)

Section 18(c)(5) of the OSH Act requires that the State Plan devote adequate funds for the administration and enforcement of its standards (29 CFR 1956.10(h)). Illinois has funded its public employee safety and health program since 1985 solely utilizing State funds. The State Plan will be funded at $3 million ($1.5 million Federal 50% share and $1.5 million State 50% matching share) during Federal Fiscal Year 2009.

Accordingly, OSHA finds that the Illinois State Plan has provided for sufficient, qualified personnel and adequate funding for the various activities to be carried out under the Plan.

(7) Records and Reports

State Plans must assure that employers in the State submit reports to the Assistant Secretary in the same manner as if the Plan were not in effect (section 18(c)(7)) of the OSH Act). Under a public employee State Plan, public employers must maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private sector employers under the OSH Act and 29 CFR 1956.10(i). The Plan must also provide assurances that the designated agency will make such reports to the Assistant Secretary in such form and containing such information as he or she may from time to time require (section 18(c)(8) of the OSH Act and 29 CFR 1956.10(j)).

Illinois has provided assurances in its State Plan (p. 19) that all jurisdictions covered by the State Plan will maintain valid records and make timely reports on occupational injuries and illnesses, as required for private sector employers under the OSH Act. Specific regulations on this aspect of the State Plan will be submitted by Illinois in accord with its developmental schedule, in which the State has agreed to adopt amendments to regulations regarding recordkeeping equivalent to 29 CFR 1904 within two years of plan approval.

Illinois has also provided assurance in its State Plan (p. 20) that it will coordinate with the Illinois Department of Public Health and the Bureau of Labor Statistics (BLS) to expand the current BLS Annual Survey of Injuries and Illnesses in the State to provide more detailed injury, illness, and fatality rates for the public sector within two years of plan approval. Illinois will also provide reports to OSHA in the desired form and participate in OSHA's Integrated Management Information System as well as OSHA's Information System, once deployed. (Illinois State Plan p. 16; p. 20)

OSHA finds that the Illinois State Plan has met the requirements of section 18(c)(7) and (8) of the OSH Act on the employer and State reports to the Assistant Secretary.

(8) Voluntary Compliance Program

A State Plan must undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1956.11(c)(2)(xii)).

The Illinois State Plan (pp. 13–14) provides that the State Department of Labor will continue and expand educational programs for public employees specifically designed to meet the regulatory requirements and needs of the public employer. The Plan also provides that consultation visits and training classes will be conducted at work sites by request of the employer and will be tailored to the public employer's concerns. In addition, public agencies are encouraged to develop and maintain their own safety and health programs as an adjunct to but not a substitute for the IDOL enforcement program.

Illinois will establish an on-site consultation program for the public sector parallel to Illinois' existing private sector on-site consultation program (under section 21(d) of the OSH Act) within three years of plan approval, which includes establishing a public sector consultation staff separate from enforcement. (Illinois State Plan, p. 19)

OSHA finds that the Illinois State Plan provides for the establishment and administration of an effective voluntary compliance program.

E. Decision

OSHA, after carefully reviewing the Illinois State Plan for the development and enforcement of State standards applicable to State and local government employees and the record developed during the above described proceedings, has determined that the requirements and criteria for initial approval of a developmental State Plan have been met. The Plan is hereby approved as a developmental plan for public employees only under section 18 of the Act and 29 CFR 1956. This decision incorporates the requirements of the Act and of regulations applicable to State Plans generally.

The initial approval of a State Plan for public employees in Illinois is not a significant regulatory action as defined in Executive Order 12866.

F. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the initial approval of the Illinois State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment, but is limited to the State and its political subdivisions. Moreover, the Illinois Safety Inspection and Education Act has been in effect since 1961 and the Illinois Health and Safety Act has been in effect since 1936, when the State first established a safety and health program. Since 1985, the Illinois program for public employees has been in operation under the Illinois Department of Labor with State funding and most public sector employers in the State, including small units of local government, have been subject to its terms. Compliance with State OSHA

standards is required by State law; Federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan. Accordingly, no new obligations would be placed on public sector employers as a result of Federal approval of the Plan.

G. Federalism

Executive Order 13132, ''Federalism,'' emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect State or local governments. OSHA has consulted extensively with Illinois throughout the development, submission and consideration of its proposed State Plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the Act, which have no effect outside the particular State receiving the approval, OSHA has reviewed today's Illinois initial approval decision, and believes it is consistent with the principles and criteria set forth in the Executive Order.

H. Effective Date

OSHA's decision granting initial Federal approval to the Illinois State Plan for public employees only is effective September 1, 2009. Although the State has had a program in effect for many years, modification of the program will be required over the next three years by today's decision. Federal 50% matching funds have been explicitly provided in the U.S. Department of Labor's FY 2009 appropriation. Notice of proposed initial approval of the plan was published in both the **Federal Register** and in the *Daily Herald* newspaper in Illinois with requests for comment. No comments opposing initial approval of the Plan were received, and OSHA believes that no party is adversely affected by initial approval of the Plan. OSHA therefore finds, pursuant to section 553(d) of the Administrative Procedures Act, that good cause exists for making Federal approval of the Illinois Public Employee Only State Plan effective upon publication in today's **Federal Register.**

I. Authority and Signature

This document was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970, (29 U.S.C. 667), 29 CFR parts 1956 and 1902, and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 26th day of August 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

List of Subjects in 29 CFR 1956

Administrative practice and procedure, Government employees, Intergovernmental relations, Law enforcement, Occupational safety and health.

For the reasons set out in the preamble, 29 CFR part 1956 is amended as follows:

PART 1956—[AMENDED]

■ 1. The authority citation for part 1956 is revised to read as follows:

Authority: Section 18 of the Occupational Safety and Health Act of 1970, (29 U.S.C. 667), 29 CFR 1902, 1952, and 1955, and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

■ 2. Subpart I is added to read as follows:

Subpart I—Illinois

Sec.
1956.80 Description of the plan as initially approved.
1956.81 Developmental schedule.
1956.82 [Reserved]
1956.83 [Reserved]
1956.84 Location of plan for inspection and copying.

Subpart I—Illinois

§ 1956.80 Description of the plan as initially approved.

(a) Authority and scope. The Illinois State Plan for Public Employee Occupational Safety and Health received initial OSHA approval on September 1, 2009. The Plan designates the Illinois Department of Labor as the State agency responsible for administering the Plan throughout the State. The Plan includes as enabling legislation the Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] and the Illinois Health and Safety Act (HSA) [820 ILCS 225]. Under the legislation, the State Director of Labor has full authority to adopt, enforce and administer all laws and rules protecting the safety and health of all employees of the State and its political subdivisions under the Illinois Public Employee Only State Plan.

(b) Standards. Illinois has adopted State standards identical to OSHA occupational safety and health standards promulgated through September 30, 2005. The State Plan provides that these standards will be updated within one year of plan approval and future OSHA standards and revisions will be adopted by the State within six months of Federal promulgation, in accordance with 29 CFR 1953.5. Any emergency temporary standards will be adopted within 30 days of Federal adoption. The State will adopt Federal OSHA standards in accordance with the provisions of the Illinois Health and Safety Act [820 ILCS 225/4.1]. The Plan also provides for the adoption of alternative or different occupational safety and health standards by the Director of Labor, where no Federal standards are applicable to the conditions or circumstances or where standards more stringent than Federal are deemed appropriate.

(c) Variances. The Plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the OSH Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance. The State has committed to amend its current variance procedures at 56 ILAC 350.40 to bring them into conformance with Federal procedures at 29 CFR 1905 within two years of plan approval.

(d) Employee notice and discrimination protection. The Plan provides for notification to employees of their protections and obligations under the Plan by such means as the State poster and required posting of notices of violations. The Plan also provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Acts in terms similar to section 11(c) of the OSH Act. The SIEA provides that an employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 calendar days after the violation occurs, file a complaint with the Director of Labor alleging the discrimination. The Plan provides that the Director shall investigate such complaints as appropriate and make a determination within 90 days. If the Director determines that the provisions of this section have been violated, the Director shall bring an action in the circuit court for appropriate relief.

(e) Inspections and enforcement. The Plan provides for inspection of covered

workplaces, including inspections in response to employee complaints by the Department of Labor. If a determination is made that an employee complaint does not warrant an inspection, the complainant shall be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. The Plan provides the opportunity for employer and employee representatives to accompany the inspector during an inspection for the purpose of aiding in the inspection and in the absence of such a representative, the right to interview a reasonable number of employees during the inspection. The Plan also provides for the right of entry for inspection and prohibition of advance notice of inspection. The Director of Labor is responsible for all enforcement actions, including the issuance of all citations which must specify the abatement period, posting requirements, and the employer's and employees' right to contest any or all citations. Although the Plan contains authority for a system of first-instance monetary penalties, in practice it is the State's intent to issue monetary penalties only for failure to correct and egregious violations. The State has discretionary authority for civil penalties of not more than $10,000 for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to $1,000 per violation and failure-to-correct violations may be assessed a penalty of up to $1,000 per violation per day. In addition, any public employer who willfully violates any standard, rule, or order can be charged by the Attorney General with a Class 4 felony if that violation causes death to any employee.

(f) Review procedures. Although the Director has statutory responsibility for both the enforcement and the appeals process (820 ILCS 220/2.4), in practice, Administrative Law Judges (ALJ) hear contested cases without any oversight or review by the Director. The State will make appropriate changes to its regulations and procedures to ensure the separation of these functions and the independence of the adjudicatory process within one year of plan approval. The Director of Labor will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested. Public employers or their representatives who receive a citation or a proposed penalty may within 15 working days contest the citation, proposed penalty and/or abatement period and request a hearing before an Administrative Law Judge. Any public employee or representative may within 15 working days request a hearing before an ALJ regarding the reasonableness of the abatement period. Informal review prior to contest may also be requested at the division level. The ALJ's decision is subject to appeal to the courts.

(g) Staffing and resources. The Plan further provides assurances of a fully trained, adequate staff within three years of plan approval, including 11 safety and 3 health compliance officers for enforcement inspections, and 3 safety and 2 health consultants to perform consultation services in the public sector. The State has assured that it will continue to provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards as required by 29 CFR 1956.10. The State has also given satisfactory assurance of adequate funding to support the Plan.

(h) Records and reports. The Plan provides that public employers in Illinois will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to that required for private sector employers under Federal OSHA. Illinois has assured that it will coordinate with the Illinois Department of Health to expand its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses to include public sector employers. The State will comply with the provisions of 29 CFR 1904.7, which allow full employee and employee representative access, including employee's names, to the log of workplace injuries and illnesses; and will amend its recordkeeping regulations within two years of plan approval. The Plan also contains assurances that the Director of Labor will provide reports to OSHA in such form as the Assistant Secretary may require, and that Illinois will participate in OSHA's Integrated Management Information System as well as it successor, OSHA Information System, once deployed.

(i) Voluntary compliance programs. The Plan provides that training will be provided to public employers and employees; a separate on-site consultation program in the public sector will be established to provide services to public employers who request assistance; and all State agencies and political subdivisions will be encouraged to develop and maintain internal safety and health programs as an adjunct to, but not a substitute for, the Director of Labor's enforcement.

§ 1956.81 Developmental schedule.

The Illinois State Plan is developmental. The following is a schedule of major developmental steps as provided in the Plan that will be accomplished within three years of plan approval:

(a) Illinois will adopt standards identical to or at least as effective as the applicable existing OSHA standards and revise the Rules of Procedures in Administrative Hearings (56 ILAC 120), clarifying the separation of the enforcement role of the Director of Labor from the adjudicatory role in contested cases, within one year after plan approval.

(b) Illinois will update and adopt amendments to the Illinois Administrative Rules (56 ILAC 350) regarding identical standards, variances, inspections, review system for contested cases and employee access to information equivalent to 29 CFR parts 1903, 1905, 1911 and 2200 within two years after plan approval.

(c) Illinois will adopt amendments to rules regarding recordkeeping substantially identical to 29 CFR part 1904 within two years after plan approval.

(d) An annual performance plan will be developed and submitted with the FY 2010 Grant Application. The performance plan will focus on achievement of developmental steps and activity reporting until such time as the program is fully operational, at which point objective, results-oriented performance goals will be established.

(e) Illinois will develop an inspection scheduling system that targets high hazard establishments within two years of plan approval.

(f) Illinois will develop a comprehensive field operations manual that is at least as effective as the Federal Field Operations Manual within two years after plan approval.

(g) Illinois will begin hiring critical program management staff and filling current vacancy positions within 30 days of plan approval.

(h) Illinois will hire the additional Enforcement program field and support staff within two years of plan approval.

(i) Illinois will fully implement and staff a public employer/employee Consultation program equivalent to 29 CFR part 1908, and training and education programs separate from Enforcement, within three years after plan approval.

(j) Illinois will have an authorized compliance staff of 11 Safety Inspectors and 3 Industrial Hygienists (non-supervisory) and a public sector consultation staff of 3 Safety Consultants and 2 Industrial Hygiene

Consultants within three years of plan approval.

(k) Illinois and OSHA will develop a plan for joining the OSHA Integrated Management Information System to report State plan activity, including specific information on inspections, consultation visits, etc., in conjunction with OSHA, within six months of plan approval. Illinois will convert to the new OSHA Information System upon its deployment. In the interim, Illinois will provide monthly reports on its activity in an agreed upon format.

(l) Illinois will coordinate with the Illinois Department of Public Health and the Bureau of Labor Statistics to expand the current Illinois survey to provide more detailed injury/illness/fatality rates on State and local government, within two years of plan approval.

(m) Illinois will revise and submit a State poster for posting at all public sector workplaces in the State within one year of plan approval.

§ 1956.82 [Reserved]

§ 1956.83 [Reserved]

§ 1956.84 Location of plan for inspection and copying.

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N–3700, Washington, DC 20210; OSHA's Regional Office in Chicago, Illinois, at 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, IL 60604; and at: the Offices of the Illinois Department of Labor, Safety Inspection and Education Division at 1 West Old State Capitol Plaza, 3rd floor, Springfield, IL 62701; 160 North LaSalle Street, Suite C–1300, Chicago, IL 60601; or 2309 West Main Street, Suite 115, Marion, IL 62959.

[FR Doc. E9–21044 Filed 8–31–09; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–045–FOR; Docket ID No. OSM–2008–0011]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Utah regulatory program (the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Utah proposed revisions to and additions of rules about the sealing of wells and boreholes, Division of Oil, Gas and Mining (''Division'' or ''DOGM'') responsibilities when requesting additional information during permit reviews, and the definition of intermittent stream. Utah is revising its program to be consistent with the corresponding Federal regulations, to achieve greater scientific accuracy, and to improve operational efficiency.

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

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, (303) 293–5015, *jfulton@OSMRE.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Submission of the Proposed Amendment

By letter dated May 28, 2008 Utah sent us an amendment to its program (Document ID No. OSM–2008–0011–0001) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the June 24, 2008, **Federal Register** (73 FR 35607). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Document ID No. OSM–2008–0011–0001). We did not hold a public hearing or meeting because no one requested one. We received comments from two industry groups and one Federal agency.

III. OSM's Findings

The following are our findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. The Casing and Sealing of Underground Openings

Utah is amending R645–301–551 to read:

Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, drill hole, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1711 and all other applicable state and federal regulations as soon as practical. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649–3–24 will satisfy these requirements.

This amendment adds ''drill holes'' to the list of underground openings specified in R645–301–551. The amendment also adds a requirement that the casing and sealing of underground openings be consistent with ''all other applicable State and Federal regulations as soon as practical.'' Finally, the amendment adds the following sentence to the end of the regulatory provision: ''With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649–3–24 will satisfy these requirements.''

''Drill hole'' is defined by the Dictionary of Mining, Minerals, and Related Terms (2nd ed. 1997.) as ''a hole in rock or coal made with an auger or a drill''. Drill holes, unlike other types of openings to underground mines, such

as shafts, adits, tunnels, slope, and drift openings are not large holes that provide access to the mine workings for personnel or for the purpose of coal removal. Drill holes tend to be smaller than other types of openings and can serve multiple purposes, including but not limited to, ventilation, water quality monitoring wells, and coal exploration. Drill holes were already governed by R645–301–551 prior to this amendment, as the provision encompasses not just the underground openings specifically listed in the regulation, but all openings to the surface from underground. The addition of the term ''drill hole'' to the first sentence of the provision thus merely adds a specific reference to one particular type of underground opening encompassed by the regulation.

The proposed addition of the requirement that the capping, sealing, backfilling, or other proper management of underground openings be done in a manner ''consistent with * * * all other applicable State and Federal regulations as soon as practical'' modifies the regulation in two ways. First, the amendment acknowledges that other State or Federal laws may apply to the casing and sealing of underground openings and, second, it requires expeditious reclamation of underground openings once they are no longer needed for monitoring or other use approved by the Division.

Utah's proposed addition of a new sentence providing that ''[w]ith respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649–3–24 will satisfy these requirements'' has the effect of specifying two alternate methods by which an operator can comply with the casing and sealing requirements for drill holes, unless otherwise approved by DOGM.

SMCRA requires, among other things, that underground coal mining permits require an operator to seal all portals, entryways, drifts, shafts, or other openings between surface and underground mine workings when no longer needed for the conduct of mining operations and to fill or seal exploratory holes no longer needed for the conduct of mining operations. 30 U.S.C. 1266(b)(2) and (3). Both Federal and State regulations require, among other things, that openings to the surface from underground no longer needed for uses approved by the regulatory authority be capped, sealed, backfilled or otherwise properly managed as required by the regulatory authority and consistent with 30 CFR 75.1711. Federal and State regulations also require that permanent closure measures be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery and to prevent acid or toxic drainage from entering ground or surface water. Finally, all capping, sealing and backfilling or other proper management of underground openings must be consistent with Mine Safety and Health Administration (MSHA) regulations at 30 CFR 75.1711. See 30 CFR 816.13/817.13 and 816.15/817.15 and Utah R645–301–551.

30 CFR 75.1711 requires that openings of coal mines declared inactive by the operator, permanently closed, or abandoned for more than 90 days be sealed by the operator in a manner prescribed by the Secretary of Labor. 30 CFR 75.1711 also requires that openings of all other mines be adequately protected to prevent entrance by unauthorized persons in a manner prescribed by the Secretary of Labor. 75 CFR 75.1711–3 includes fencing and signage requirements prohibiting the entrance of unauthorized persons into the openings of all mines not declared by the operator to be inactive, permanently closed, or abandoned for less than 90 days. Utah's proposed modifications to R645–301–551 do not cause any inconsistency of the Utah provision with the MSHA requirements at 75 CFR 75.1711 and 75.1711–3.

The MSHA regulations at 30 C.F.R.75.1711–1 and 75.1711–2 deal specifically with the sealing of shaft (75.1711–1) and slope or drift (75.1711–2) openings. Drill holes are relatively small diameter openings made with drills rather than shaft, slope or drift openings which are larger diameter holes made with larger equipment. The Division's requirements for sealing drill holes do not conflict with the requirements of 30 CFR 75.1711–1 and 75.1711–2. Therefore, this change does not raise any issue of inconsistency.

Under Utah's proposed modifications to R645–301–551, unless otherwise approved by DOGM, an operator's compliance with one of two alternate regulatory provisions (43 CFR 3484.1(a)(3) or R649–3–24) will be deemed to satisfy casing and sealing requirements for drill holes. As the regulatory authority, the Division has the authority to approve alternative means of accomplishing the casing and sealing of underground openings so long as Utah's program remains no less effective than the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15 in meeting the requirements of SMCRA.

The first regulation cited by Utah, 43 CFR 3484.1(a) (3), is a Bureau of Land Management (BLM) regulation pertaining to coal exploration and mining activities. The BLM regulation requires that exploration drill holes be capped with at least 5 feet of cement and filled with a permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures. Additional plugging requirements apply under the BLM regulation for exploration holes drilled deeper than stripping limits, i.e., deeper than the material to be removed during the mining process. 30 CFR 4384.1(a)(3) allows a BLM authorized officer to approve a lesser cap or plug. Finally, the BLM regulation provides that exploration activities shall be managed to prevent water pollution and mixing of ground and surface waters and to ensure the safety of people, livestock, and wildlife.

The BLM regulation, like the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15, serves to prevent the migration of water and hydrocarbon gases between strata, prevent water pollution, minimize disturbance to the hydrologic balance, and ensure the safety of people, livestock and wildlife. OSM finds that the Division's proposal to allow an operator's compliance with 43 CFR 4384.1(a)(3) to satisfy the casing and sealing requirements of R645–301–551 as applicable to drill holes is no less effective than the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15 in meeting the requirements of SMCRA.

Utah's proposal would also deem an operator's compliance with the performance standards of another Utah regulation, R649–3–24, to constitute compliance with R645–301–551, as applicable to drill holes. The R649 rules were written to apply to oil and gas mining and generally would not apply to coal mining. Utah clarified its intention that the pertinent provisions are the performance standards found in subsection (3) & (4) (see Administrative Record # OSM–2008–0011–0007). R649–3–24(3) requires that a dry or abandoned well be plugged so that oil, gas, water, or other substances will not migrate through the well bore from one formation to another. R649–3–24(3.1) through (3.8) specify methods and procedures for plugging a well, require cement as the primary plugging material, and allow intervals between plugs to be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or though the well bore. R649–3–24(3.4) requires the surface of the opening to be completely plugged with cement. The requirements of R649–3–24(3) through

(3.8), like the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15, serve to prevent the migration of gases and fluids between strata, minimize damage to the hydrologic balance, and prevent access to the mine workings, and thereby eliminate safety hazards posed by underground openings.

We find all changes to R645–301–551 to be no less effective than the Federal regulations at 30 CFR 816.13/817.13 and 816.15/817.15 in meeting the requirements of SMCRA and approve them.

Utah is also amending R645–301–631, R645–301–631.200, and R645–301–765 to add a reference to R645–301–551 (proposed for revision above). These provisions deal with the casing and sealing of exploration holes, boreholes, and wells. Exploration holes, boreholes, and wells are all holes made with drills, or ''drill holes.'' R645–301–551 has been revised to deal specifically with drill holes. As such, this is the appropriate reference for performance standards regarding the casing and sealing of drill holes. Because R645–301–551 is no less effective than its Federal counterpart, we find these cross-references to R645–301–551 to be no less effective than Federal requirements and approve them.

B. Requests for Additional Information

Utah is adding subsection R645–300–131.300 which reads:

R645–300–130 Review of Permit Application. * * * 131.300. If, after review of the application for a permit, permit change, or permit renewal, additional information is required, the Division will issue a written finding providing justification as to why the additional information is necessary to satisfy the requirements of the R645 Rules and issue a written decision requiring the submission of the information.

In the event that additional information is required in a permit application review, the Division must now issue a written decision that the information is necessary and legal justification as to why. This will create a written record of the request and provide specific legal guidance to the applicant. Applicants will then clearly understand which regulation's requirements have not been satisfactorily met. Because this is a written decision the applicant, permitee, or any person with an interest which is or may be adversely affected may appeal the decision (see R645–300–211).

A permit applicant has the burden of establishing that their application is complete. However, when the Division is reviewing an application and finds that additional information is necessary to complete that review, the information must be requested from the applicant.

When the Division needs more information to complete a permit application review it is because the applicant has not submitted sufficient supporting documentation to make the necessary findings for the type of permitting action being requested. The Division will know what the application is lacking and what provision(s) requires the information by conducting its standard review. The Division will cite the unsatisfied regulation to ensure that the applicant understands exactly what is being requested and why.

This addition does not have a Federal counterpart. Under the Federal program requests for additional information would be made through comment letters. Federal comment letters do not carry the right of appeal. However, if the applicant does not respond by submitting the necessary information, OSM must then issue a decision denying the application based on the deficiency of information. This decision would have the right of appeal. DOGM's addition will allow appeals earlier in the permit review process.

The existing provision continues to be no less effective than Federal requirements under SMCRA. The addition proposed here would be no less effective than Federal regulations and we approve it.

C. Intermittent Streams

Utah proposes to revise R645–100–200 to read:

''Intermittent Stream'' means a stream, or reach of stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

The Federal definition of ''intermittent stream'' at 30 CFR 701.5 includes two parts, (a) and (b). Under this definition ''intermittent stream'' means: (a) A stream or reach of a stream that drains a watershed of at least one square mile, or (b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Utah's definition of ''intermittent stream'' formerly included parts (a) and (b) similar to the Federal definition. Utah proposed to eliminate part (a) which incorporated into the definition of intermittent stream any stream or reach of stream that drains a watershed of at least one square mile. The change is intended to adopt a more hydrologically accurate definition of intermittent streams as well as to clarify the distinction between intermittent and ephemeral streams. Ephemeral streams continue to be defined as ''a stream which flows only in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.'' This amendment separates the terms completely, with the basic distinction being that intermittent streams receive some groundwater contributions and ephemeral streams do not.

The Federal definition with two parts includes ephemeral streams that drain a watershed of at least one square mile within the definition of intermittent stream. By itself, Utah's proposed change to the definition of intermittent steam is deficient because it does not include all the streams that would be covered by the Federal definition. To remedy the deficiency, Utah proposed to add specific language to all regulations involving intermittent streams to include ephemeral streams that drain a watershed of at least one square mile (additional changes approved below).

As a result of all proposed changes, all coal mining and reclamation activities affecting any stream or drainage channel will be subject to the same requirements as before this definition change. Taking into account all proposed changes, we find this definition change to be no less effective than Federal regulations and we approve it.

Utah is adding language to the following rules: R645–301–535.210, R645–301–535.223, R645–301–731.610, R645–301–742.320, and R645–301–742.321, R645–301–742.323, R645–301–742.324, R645–301–742.331, and R645–301–742.412. These additions rectify the potential problem created by the change in definition of ''intermittent stream.'' By adding ''or ephemeral streams that drain a watershed of at least one square mile,'' the Division reinstates channels that drain a watershed of at least one square mile and flow only in response to surface runoff to the regulations where the above definition change would have excluded them.

All provisions pertaining to intermittent streams in the Utah Administrative Rules are being revised here. Because these additions only reinstate drainages which would have been excluded through the definition change, these are nonsubstantive changes. With the definition change, these additions ensure that the Utah Administrative Rules are inclusive of all watercourses defined as intermittent streams under Federal Regulations at 30 CFR 701.5. We approve these changes.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Document ID No. OSM–2008–0011–0001). We received comments from one Federal agency and two industry groups.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Document ID No. OSM–2008–0011–0003).

We received a comment from the Bureau of Land Management on July 3, 2008 (Document ID No. OSM–2008–0011–0005.1). This comment points out a citation error in the Code of Federal Regulations at 30 CFR 817.15. The citation is of ''30 CFR 75.1771'', which does not exist. The correct citation should be ''30 CFR 75.1711''. OSM acknowledges this error and will address it in a future rulemaking action.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 2, 2008, we requested comments on Utah's amendment (Document ID No. OSM–2008–0011–0003), but neither responded to our request.

Industry Group Comments

We received a comment from the Utah Mining Association (UMA) on August 5, 2008 (Document ID No. OSM–2008–0011–0006.1). The UMA supports this amendment and recommends adoption of the new definition of ''intermittent stream''. They state that it will provide clarification between ''intermittent'' and ''ephemeral'' and will provide more hydrologically accurate definitions of these terms. We agree and are approving these changes.

We received a comment from the Law Office of Snell & Wilmer on behalf of UtahAmerican Energy, Inc (UEI) on July 25, 2008 (Document ID No. OSM–2008–0011–0004.1). This comment indicates that UEI supports the ''intermittent stream'' definition change and recommends that OSM approve it. They state that this change clarifies the distinction between the terms ''ephemeral'' and ''intermittent'' and will help DOGM determine baseline hydrologic data and monitoring requirements. We agree and are approving these changes.

V. OSM's Decision

Based on the above findings, we approve Utah's May 28, 2008 amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 2009.

James F. Fulton,

Acting Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

PART 944—UTAH

■ 1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 944.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 944.15 Approval of Utah regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
May 28, 2008	September 1, 2009	Utah Admin. R.645–100–200 definition of intermittent stream; 645–301–131.300; 645–301–535.210; 645–301–535.223; 645–301–551; 645–301–631; 645–301–631.200; 645–301–731.610, 645–301–742.320; 645–301–742.321; 645–301–742.323, 645–301–742.324, 645–301–742.331, 645–301–742.412; 645–301–765.

[FR Doc. E9–21053 Filed 8–31–09; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2009–0561]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, USACE Revetment, Mile Marker 869 to 303

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone on the Lower Mississippi River from mile marker 869.0 to 303.0, extending the entire width of the river, 0.5 mile downriver and 0.5 mile upriver from the 2009 US Army Corps of Engineers (USACE) revetment work throughout the Lower Mississippi River. This moving safety zone is needed to protect persons and vessels from the potential safety hazards created by the 2009 USACE revetment project. Entry into this zone is prohibited to all vessels and mariners unless authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative.

DATES: This rule is effective from September 1, 2009, at 6 a.m. until 6 p.m. to November 1, 2009. The safety zone has been enforced with actual notice since July 4, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0561 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0561 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and Sector Lower Mississippi River, 2 Auction Avenue, Memphis, Tennessee 38105 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Warrant Officer Ray Bartlett, Sector Lower Mississippi River Waterways Management Branch, at (866) 777–2784, e-mail: *Raymond.J.Bartlett@USCG.MIL.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior

notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and contrary to public interest. The USACE revetment project is an annual event that is needed to ensure bank erosion does not affect the proper navigational depth on the Lower Mississippi River. One-way traffic around the work barges and possible closures of this portion of the river are necessary to ensure vessels are not put into jeopardy during the revetment work. Broadcast Notice to Mariners (BNM) will update mariners of the progress of the revetment project throughout the time period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect USACE vessels and personnel.

Background and Purpose

On 11 June 2009, the USACE notified the COTP Lower Mississippi River of their 2009 revetment schedule. The USACE utilizes special types of barges, Concrete Mat Laying, rock moving crane, and leveling graders along with scoop and pan dredges. Each barge commonly has a M/V for maneuvering. Passing arrangements may be made with the USACE M/V prior to arriving within 0.5 miles of each work site.

Several work locations are planned for the 2009 season. Starting on July 04, 2009, the scheduled work sites are expected to be within the COTP Lower Mississippi River's Area of Responsibility (AOR). Starting at mile marker 839.0, and then continuing down river to approximately 20 other scheduled locations. Each location is predetermined by the USACE.

A hazardous situation could exist for vessels, mariners, and spectators in the vicinity of the revetment work sites due to the inherently dangerous work involved. A safety zone is needed to protect those vessels, mariners, and spectators from the hazards associated with revetment work.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River extending the entire width of the river from mile marker 869.0 to mile marker 303.0. Entry into this zone is prohibited unless specifically authorized by the COTP Lower Mississippi River or a designated representative. The COTP Lower Mississippi River may be contacted by telephone at (866) 777–2784. The COTP Lower Mississippi River or a designated representative will inform the public through BNM's of changes in the effective period and locations of the USACE vessels for the safety zone. This rule is effective from July 04, 2009, at 6 a.m. until 6 p.m. on November 01, 2009, or until the USACE revetment work is complete.

Regulatory Evaluation

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule will only be in effect for a short period of time and notifications to the marine community will be made through BNM. The impacts on routine navigation are expected to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit between mile marker 869.0 and mile marker 303.0 on the Lower Mississippi River from July 4, 2009, at 6 a.m. until 6 p.m. on November 1, 2009, or until the USACE revetment work is complete.

This safety zone will not have a significant economic impact on a substantial number of small entities because this rule allows for the USACE M/V to determine safe passage of one way traffic and night-time two way traffic during the time period. In addition, the COTP will provide updates to the mariners with BNM.

Assistance for Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T08–0561 to read as follows:

§ 165.T08–0561 Safety Zone; Lower Mississippi River, USACE Revetment, Mile Marker 869 to 303.

(a) *Location.* The following area is a safety zone: 0.5 mile downriver and 0.5 mile upriver from the 2009 U.S. Army Corps of Engineers (USACE) revetment work throughout the Lower Mississippi River, beginning at mile marker 869.0 and ending at mile marker 303.0, extending the entire width of the river during revetment operations. A mooring barge and spar barge will be perpendicular to the shore, and a work barge with a supply barge will be parallel to the shore and tied off to the mooring barge. The work barge utilizes large cranes in conjunction with bulldozers on the river bank to lay the mat. A Broadcast Notice to Mariners will be used by the Captain of the Port (COTP) Lower Mississippi River to identify specific locations of the USACE M/V and revetment locations.

(b) *Effective dates.* This section is effective from 6 a.m. on July 4, 2009, until 6 p.m. on November 1, 2009, or until the USACE revetment work is complete.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by vessels or mariners is prohibited unless authorized by the COTP Lower Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the COTP Lower Mississippi River or a designated representative. They may be contacted on VHF–FM Channel 16, or by telephone at (866) 777–2784.

(3) All persons and vessels shall comply with the instructions of the COTP Lower Mississippi River and designated personnel. ''Designated personnel'' include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 28, 2009.

M.S. Gardiner,

Captain, U.S. Coast Guard, Captain of the Port Lower Mississippi River.

[FR Doc. E9–21022 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8089]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for

suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia:				
Frederick County, Unincorporated Areas.	510063	November 5, 1973, Emerg; July 17, 1978, Reg; September 2, 2009, Susp.	Sept. 2, 2009	Sept. 2, 2009
Middletown, Town of, Frederick County	510274	February 24, 1975, Emerg; August 3, 1984, Reg; September 2, 2009, Susp.	.....do*	Do.
Norfolk, City of, Independent City County.	510104	August 15, 1973, Emerg; August 1, 1979, Reg; September 2, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Stephens City, Town of, Frederick County.	510064	June 17, 1975, Emerg; September 10, 1984, Reg; September 2, 2009, Susp.	.....do	Do.
Winchester, City of, Independent City County.	510173	September 6, 1974, Emerg; November 15, 1978, Reg; September 2, 2009, Susp.	.....do	Do.
West Virginia:				
Bayard, Town of, Grant County	540240	October 3, 1975, Emerg; August 10, 1979, Reg; September 2, 2009, Susp.	.....do	Do.
Hardy County, Unincorporated Areas ...	540051	May 16, 1978, Emerg; June 19, 1985, Reg; September 2, 2009, Susp.	.....do	Do.
Moorefield, Town of, Hardy County	540052	May 12, 1975, Emerg; July 1, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Petersburg, Town of, Grant County	540039	April 18, 1975, Emerg; June 18, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Wardensville, Town of, Hardy County ...	540245	April 17, 1975, Emerg; August 1, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Region IV				
Georgia:				
Arlington, City of, Calhoun, Early County.	130026	November 3, 1975, Emerg; June 3, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Brooks County, Unincorporated Areas ..	130281	May 3, 1982, Emerg; May 3, 1982, Reg; September 2, 2009, Susp.	.....do	Do.
Calhoun County, Unincorporated Areas	130571	August 10, 1999, Emerg; NA, Reg; September 2, 2009, Susp.	.....do	Do.
Dawson, City of, Terrell County	130509	September 27, 1994, Emerg; NA, Reg; September 2, 2009, Susp.	.....do	Do.
Early County, Unincorporated Areas	130499	February 28, 1991, Emerg; August 2, 1995, Reg; September 2, 2009, Susp.	.....do	Do.
Edison, City of, Calhoun County	130085	September 14, 2007, Emerg; NA, Reg; September 2, 2009, Susp.	.....do	Do.
Lee County, Unincorporated Areas	130122	May 1, 1975, Emerg; May 15, 1991, Reg; September 2, 2009, Susp.	.....do	Do.
Leesburg, City of, Lee County	130348	March 3, 1976, Emerg; June 17, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
North High Shoals, Town of, Oconee County.	130368	October 28, 1983, Emerg; September 1, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Oconee County, Unincorporated Areas	130453	October 16, 1975, Emerg; July 17, 1989, Reg; September 2, 2009, Susp.	.....do	Do.
Quitman, City of, Brooks County	130015	December 26, 1973, Emerg; April 1, 1982, Reg; September 2, 2009, Susp.	.....do	Do.
Reynolds, Town of, Taylor County	130527	NA, Emerg; June 19, 2003, Reg; September 2, 2009, Susp.	.....do	Do.
Smithville, City of, Lee County	130349	January 18, 1983, Emerg; June 4, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Taylor County, Unincorporated Areas ...	130522	NA, Emerg; February 13, 1997, Reg; September 2, 2009, Susp.	.....do	Do.
Terrell County, Unincorporated Areas ...	130400	February 13, 1997, Emerg; NA, Reg; September 2, 2009, Susp.	.....do	Do.
Watkinsville, City of, Oconee County	130369	March 18, 1976, Emerg; August 19, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Kentucky:				
McCreary County, Unincorporated Areas.	210343	November 19, 1996, Emerg; NA, Reg; September 2, 2009, Susp.	.....do	Do.
Monticello, City of, Wayne County	210221	July 2, 1975, Emerg; September 18, 1985, Reg; September 2, 2009, Susp.	.....do	Do.
Morganfield, City of, Union County	210216	July 23, 1975, Emerg; September 1, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Shelby County, Unincorporated Areas ..	210209	August 23, 1996, Emerg; September 1, 2001, Reg; September 2, 2009, Susp.	.....do	Do.
Shelbyville, City of, Shelby County	210376	June 9, 1997, Emerg; NA, Reg; September 2, 2009, Susp.	.....do	Do.
Sturgis, City of, Union County	210217	April 8, 1975, Emerg; September 1, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Union County, Unincorporated Areas ...	210301	December 21, 2005, Emerg; NA, Reg; September 2, 2009, Susp.	.....do	Do.
Uniontown, Town of, Union County	210218	May 23, 1997, Emerg; April 1, 1998, Reg; September 2, 2009, Susp.	.....do	Do.
North Carolina:				
Alleghany County, Unincorporated Areas.	370004	December 23, 2002, Emerg; February 1, 2004, Reg; September 2, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Sparta, Town of, Alleghany County	370005	April 27, 1977, Emerg; July 3, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Region VI				
Texas:				
Bulverde, City of, Comal County	481681	NA, Emerg; March 24, 1998, Reg; September 2, 2009, Susp.	.....do	Do.
Comal County, Unincorporated Areas ..	485463	March 5, 1971, Emerg; November 9, 1973, Reg; September 2, 2009, Susp.	.....do	Do.
New Braunfels, City of, Comal County	485493	December 4, 1970, Emerg; December 1, 1972, Reg; September 2, 2009, Susp.	.....do	Do.
Region VII				
Kansas:				
Great Bend, City of, Barton County	200019	February 24, 1977, Emerg; May 16, 1983, Reg; September 2, 2009, Susp.	.....do	Do.
Hoisington, City of, Barton County	200020	February 21, 1975, Emerg; February 5, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Pawnee Rock, City of, Barton County ..	200021	May 10, 1976, Emerg; January 14, 1977, Reg; September 2, 2009, Susp.	.....do	Do.
Region VIII				
North Dakota:				
Bottineau, City of, Bottineau County	380007	July 1, 1974, Emerg; September 28, 1979, Reg; September 2, 2009, Susp.	.....do	Do.
Haram, Township of, Bottineau County	380673	May 16, 1983, Emerg; January 2, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Lansford, City of, Bottineau County	380184	February 5, 1979, Emerg; August 12, 1980, Reg; September 2, 2009, Susp.	.....do	Do.
Lansford, Township of, Bottineau County.	380675	June 1, 1983, Emerg; August 19, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Newborg, Township of, Bottineau County.	380668	April 5, 1983, Emerg; January 16, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Souris, City of, Bottineau County	380010	August 12, 1977, Emerg; March 18, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Willow City, City of, Bottineau County ..	380011	May 27, 1976, Emerg; September 28, 1979, Reg; September 2, 2009, Susp.	.....do	Do.
South Dakota:				
Baltic, Town of, Minnehaha County	460058	January 17, 1980, Emerg; November 19, 1980, Reg; September 2, 2009, Susp.	.....do	Do.
Brandon, City of, Minnehaha County	460296	February 9, 1977, Emerg; July 10, 1979, Reg; September 2, 2009, Susp.	.....do	Do.
Dell Rapids, City of, Minnehaha County	460059	December 17, 1974, Emerg; August 15, 1980, Reg; September 2, 2009, Susp.	.....do	Do.
Hanson County, Unincorporated Areas	460270	February 26, 1997, Emerg; July 1, 1998, Reg; September 2, 2009, Susp.	.....do	Do.
Hutchinson County, Unincorporated Areas.	460041	June 27, 1986, Emerg; April 1, 1987, Reg; September 2, 2009, Susp.	.....do	Do.
Lake County, Unincorporated Areas	460276	March 20, 1979, Emerg; August 5, 1986, Reg; September 2, 2009, Susp.	.....do	Do.
Madison, City of, Lake County	460044	May 15, 1975, Emerg; July 5, 1982, Reg; September 2, 2009, Susp.	.....do	Do.
Menno, City of, Hutchinson County	460199	July 28, 1975, Emerg; November 15, 1985, Reg; September 2, 2009, Susp.	.....do	Do.
Minnehaha County, Unincorporated Areas.	460057	November 11, 1974, Emerg; September 5, 1979, Reg; September 2, 2009, Susp.	.....do	Do.
Parkston, City of, Hutchinson County ...	460042	June 27, 1975, Emerg; November 15, 1985, Reg; September 2, 2009, Susp.	.....do	Do.
Sioux Falls, City of, Minnehaha County	460060	April 12, 1974, Emerg; January 17, 1979, Reg; September 2, 2009, Susp.	.....do	Do.
Valley Springs, City of, Minnehaha County.	460221	April 3, 1978, Emerg; July 16, 1980, Reg; September 2, 2009, Susp.	.....do	Do.

*.....do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: August 24, 2009.

Deborah Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–21024 Filed 8–31–09; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1828; MB Docket No. 09–118; RM–11545]

Television Broadcasting Services; Ann Arbor, Michigan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by ION Media Licensee Company, LLC, Debtor-In-Possession (''ION''), the licensee of WPXD–TV, digital channel 31, Ann Arbor, Michigan. ION requests the substitution of digital channel 50 for digital channel 31 at Ann Arbor.

DATES: This rule is effective September 1, 2009.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–118, adopted August 12, 2009, and released August 18, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding DTV channel 50 and removing DTV channel 31 at Ann Arbor.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–21050 Filed 8–31–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 07–172; FCC 09–59]

Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amended its FM translator rules to allow AM stations to use currently authorized FM translators for ''fill-in'' service within their current coverage areas, to help them provide a listenable signal to their listeners and better serve their local communities.

DATES: Effective October 1, 2009, except for 47 CFR 74.1284, which affects information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Hutton (legal issues) or James Bradshaw (engineering issues), Media Bureau, Federal Communications Commission, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in MB Docket No. 07–172, FCC 09–59, adopted and released June 29, 2009, Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations. Previously, FM translators were only authorized to rebroadcast FM radio stations and other FM translator stations. The rule changes in the Order allow FM translators to rebroadcast AM radio stations within those stations' current coverage areas. In addition, AM stations with daytime-only facilities will be allowed to originate programming on such FM translators during periods when the AM stations are not operating. These changes are intended to help AM stations provide a listenable signal throughout their current coverage areas and better serve the listening public.

Synopsis of Order

1. The Order describes several limitations and competitive challenges that AM stations face. The emergence of higher fidelity sources of audio programming, including FM broadcasts, satellite radio, personal media players and podcasts and audio streams provided through the Internet, has eroded the audience for AM stations, particularly among younger age groups. Sources of man-made interference have multiplied, creating a higher level of interference to AM signals at all hours. Skywave interference creates even greater problems starting before sunset and continuing after sunrise. Although the Commission has undertaken AM improvement efforts in the past, those efforts have not overcome the fundamental problems of AM radio and the erosion of the AM radio audience has increased to a point not previously experienced. The Order finds that the record in this proceeding clearly indicates a strong need and desire by

AM stations to supplement their signals with fill-in service from FM translators, particularly to overcome nighttime signal limitations. This record includes the experience of AM stations that have been rebroadcasting on FM translators pursuant to special temporary authority. Those stations reported that they greatly increased their service to their local communities of service, particularly with drive-time traffic and weather information and coverage of community events taking place at night.

2. The purpose of the rule changes is to improve service by AM stations within their current service areas, not to expand their service areas. Accordingly, the Order provides that no portion of the 60 dBu contour of any FM translator station rebroadcasting an AM station may extend beyond the smaller of: (a) A 25-mile radius from the AM transmitter site; or (b) the 2 mV/m daytime contour of the AM station. The Order finds that a policy of allowing de minimis extensions beyond those limits would not serve the public interest.

3. The Order finds that Class D (daytime-only) AM stations should be allowed to originate programming over fill-in FM translators during the hours that their stations are not authorized to operate. This rule change is consistent with the fundamental purpose of fill-in FM translators, which is to provide continuity of service within licensed service areas. There is also no purpose served in applying the daytime-only limitation of AM signal propagation to FM translators.

4. The Order addresses comments by proponents of low power FM (LPFM) service that creating greater demand for future FM translator authorizations by allowing them to be used by AM as well as FM stations could adversely affect opportunities for new LPFM stations. The Order agrees that flexibility for future LPFM filing opportunities will be maximized by limiting the rule change to FM translator stations that the Commission has already authorized. Accordingly, the rule change is limited to FM translator stations with licenses or permits in effect as of May 1, 2009.

5. As with FM translators used to rebroadcast FM stations, the Order finds that ownership limits are not necessary because the FM translator will not be an independent ''voice'' in the local radio market. However, the Order warns that the rule change is not intended to allow these cross-service translators to be used as surrogates for FM stations or to circumvent the Commission's local ownership limits. Accordingly, the Order states that it will be considered an abuse of the Commission's rules to use two or more cross-service translators to effectively create a de facto FM station or to circumvent the local ownership limits.

6. The full text of document FCC 09–59 and copies of any subsequently filed documents in this matter will be 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. Document FCC 09–59 and copies of subsequently filed documents in this matter also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, *http://www.bcpiweb.com*, or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *mailto:fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY). Document FCC 09–59 can also be downloaded in Word at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-59A1.doc* or Portable Document Format (PDF) at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-59A1.pdf.*

Congressional Review Act

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

Final Paperwork Reduction Act of 1995 Analysis

The Order contains new and modified information collection requirements subject to the PRA. The information collections [1] have been submitted to OMB for review under section 3507 of the PRA. OMB, the general public, and other Federal agencies were invited to comment on the modified information collection requirements contained in this proceeding.[2] In addition, the Commission notes pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–298, see 44 U.S.C. 3506(c)(4), that the Commission previously sought specific comment on how the Commission may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We find that the modified information collection requirements must apply fully to small entities (as well as to others) to ensure compliance with our FM translator rules, as described in the Order.

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (NPRM), 72 FR 62616, November 6, 2007, in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for and Objectives of the Rules

2. The Commission's previous rules precluded an FM translator from rebroadcasting the signal of any station other than that of any FM radio broadcast station or FM translator. The NPRM proposed to amend the Commission's rules to allow AM broadcast stations to license and operate FM translator stations. Based on the support for this proposal in the record and the experience gained by dozens of AM stations operating FM translators pursuant to special temporary authority as contemplated by the NPRM, the Commission concluded that allowing AM stations to use currently authorized FM translators to provide fill-in service will benefit the listening public.

3. Specifically, allowing AM stations to use currently authorized FM translator stations to rebroadcast programming within their intended service areas will benefit the public by improving the signal quality and availability of AM programming, overcoming limitations imposed by interference, weak signal strength, channel congestion and receiver quality. This positive effect will further the goals of localism, competition and diversity in broadcasting. The use of an FM translator is at the option of the broadcast licensee, so this is a permissive rule change rather than a new requirement imposed on licensees.

4. The Order adopts rule changes based on the technical proposal submitted by the National Association of Broadcasters, which would allow AM stations to operate FM translators to retransmit their AM service as a fill-in service, as long as no portion of the 60 dBu contour of the FM translator extends beyond the lesser of (a) the 2 mV/m daytime contour of the AM

[1] Information collection 3060–0029 is expected to be submitted to OMB for review and approval at the end of August 2009.

[2] *See* 74 FR 37706, July 29, 2009, and 72 FR 62616, November 6, 2007.

station, or (b) the 25-mile radius of the AM transmitter site. In order to protect opportunities for future LPFM stations in the already crowded FM spectrum, the Order limits the scope of FM translators that can be used to retransmit AM programming to those FM translators authorized by the Commission through licenses or construction permits in effect as of May 1, 2009.

5. Prior to this Order, the Commission's FM translator rules excluded AM stations from eligibility for this service. Accordingly, the Order adopts certain rule changes necessary to expand the purpose and permissible service of FM translator stations to allow their use as a fill-in service for AM radio stations, including: (a) Eligibility and ownership rules for FM translators, allowing AM licensees to acquire fill-in FM translator stations or enter into rebroadcast consent agreements with FM translator stations for fill-in service; and (b) the rule on FM translator program origination to allow Class D AM stations to originate programming on fill-in FM translators during the hours that the Class D stations are not authorized to operate. The Order notes that AM licensees will not be allowed to use reserved band FM translators or low power FM stations for fill-in service. The Order also makes clear that the Commission will not allow licensees to use combinations of FM translator stations to create de facto FM stations.

Legal Basis

6. The authority for the action taken in the Order is contained in sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. The Commission received no comments in direct response to the IRFA. However, the Commission received comments that discuss issues of interest to small entities. These comments are discussed in the section of this FRFA discussing the steps taken to minimize significant negative impact on small entities, and the significant alternatives considered. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.

8. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

9. Radio Stations. The Small Business Administration (SBA) defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on September 23, 2008, about 10,520 of 11,012 commercial radio stations (or about 95 percent) have revenues of $7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

10. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

11. FM translator stations and LPFM stations. The same SBA definition that applies to radio broadcast licensees would apply to FM translator stations and LPFM stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts.

12. Currently, there are approximately 4131 licensed FM translator and booster stations and 771 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

13. The Order provides for no changes in the current application filing and processing procedures for FM translator stations, except that FCC Forms 303–S, 345, 349 and 350 (including related instructions) will be modified to reflect the revised purpose and eligibility changes in the rules applicable to FM translator stations. Unless otherwise indicated, the Order provides for no changes in the reporting, recordkeeping and other compliance requirements for FM translator stations.

Steps Taken To Minimize Significant Negative Impact on Small Entities, and Significant Alternatives Considered

14. 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.

15. The Report and Order adopts rule changes that will benefit some AM radio stations by giving them the opportunity to address daytime and nighttime service problems by using an FM translator to provide better signal coverage. An example of a daytime service problem is interference from a man-made source such as fluorescent lights and computers. An example of a nighttime service problem is skywave interference from other AM stations. However, the use of FM translator stations by AM radio stations is not mandatory, and therefore some stations may not seek to use an FM translator for fill-in service. Other AM stations may not be able to locate and purchase an FM translator for their service areas. For these reasons, the potential benefits of the rule changes may not be realized by all AM radio stations.

16. With respect to the issue of the possible disparate impact of the

proposed rules on smaller entities, we believe that many small business broadcasters will benefit from the opportunity to improve their local signal coverage as a result of the rule changes. The record in the proceeding also indicates that for AM radio stations using FM translators to provide fill-in service, there are benefits in signal coverage for smaller as well as larger entities. Furthermore, even if some smaller AM stations do not opt to use fill-in FM translators, the alternative benefits to the radio industry in general will offset this possible impact of the rules we adopt today. As a result of using fill-in FM translators, many AM stations will become more competitive by offering improved and more varied programming, much of which may advance service to local communities, the FM translator service will be improved, and the future of LPFM service will remain under existing protections.

17. Specifically, the record in the proceeding also indicates that licensees of FM translator stations will likely benefit from the expansion in the scope of permitted service by those stations, because this will increase the demand for, and the value of, their FM translators. The record in the proceeding includes arguments that the rule changes will harm the future development of LPFM service by limiting the availability of spectrum available for that service in future application windows. The Order acknowledges this potential for harm and addresses it by limiting the scope of the rule changes to FM translators already authorized by the Commission. The Commission has noted that the next opportunity for filing applications for new stations will be for LPFM stations, and the limitation adopted in the Order maximizes the opportunities that will be available to potential LPFM applicants in that window. The Order also specifically notes that the Commission does not intend to allow parties to circumvent this limitation through special temporary authority for new FM translator service to retransmit AM station programming.

18. One issue in the proceeding regarding small entities is whether the rule changes should be implemented immediately for all AM stations or phased in based on an AM station's class, ownership or competitive posture. The Commission determined that phased-in implementation is not necessary in light of the limitation of the rule change to already authorized FM translator stations. The Commission also found that the public interest benefits and the benefits to AM station operators will be realized more quickly with immediate implementation than with phased-in implementation because those benefits will be available at once to all AM licensees instead of being made available over time to different types of licensees.

Ordering Clauses

Accordingly, it is ordered that pursuant to the authority contained in sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324, this Report and Order and the rule modifications attached hereto as Appendix A ARE ADOPTED, effective October 1, 2009. However, the information collection requirements contained in the Report and Order will become effective following Office of Management and Budget (OMB) approval. It is our intention in adopting these rule changes that, if any of the rules that we retain, modify or adopt today, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not be deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

It is further ordered that the ''Petition for Rulemaking of the National Association of Broadcasters,'' RM–11338 (filed July 14, 2006) is granted to the extent indicated herein and is otherwise denied.

It is further ordered that the ''Petition for Rulemaking of the American Community AM Broadcasters Association,'' RM–9419 (filed August 13, 1997) is dismissed.

It is further ordered that the Media Bureau will cancel all AM rebroadcast STAs and dismiss all pending AM rebroadcast STA requests as of the effective date of this Report and Order.

It is further ordered that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 74

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Research, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 74 as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 2. Section 74.1201 is amended by revising paragraphs (a), (b), (c), (d), (e), and (g), and adding paragraph (j) to read as follows:

§ 74.1201 Definitions.

(a) FM translator. A station in the broadcasting service operated for the purpose of retransmitting the signals of an AM or FM radio broadcast station or another FM broadcast translator station without significantly altering any characteristics of the incoming signal other than its frequency and amplitude, in order to provide radio broadcast service to the general public.

(b) Commercial FM translator. An FM broadcast translator station which rebroadcasts the signals of a commercial AM or FM radio broadcast station.

(c) Noncommercial FM translator. An FM broadcast translator station which rebroadcasts the signals of a noncommercial educational AM or FM radio broadcast station.

(d) Primary station. The AM or FM radio broadcast station radiating the signals which are retransmitted by an FM broadcast translator station or an FM broadcast booster station.

(e) AM or FM radio broadcast station. When used in this Subpart L, the term AM broadcast station or AM radio broadcast station or FM broadcast station or FM radio broadcast station refers to commercial and noncommercial educational AM or FM radio broadcast stations as defined in § 2.1 of this chapter, unless the context indicates otherwise.

* * * * *

(g) Translator coverage contour. For a fill-in FM translator rebroadcasting an FM radio broadcast station as its primary station, the FM translator's coverage contour must be contained within the primary station's coverage contour. For purposes of this rule section, the coverage contour of the FM translator has the same field strength

value as the protected contour of the primary FM station (*i.e.,* for a commercial Class B FM station it is the predicted 0.5 mV/m field strength contour, for a commercial Class B1 FM station it is the predicted 0.7 mV/m field strength contour, and for all other classes of FM stations it is the predicted 1 mV/m field strength contour). The coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the lesser of the 2 mV/m daytime contour of the AM station and a 25-mile (40 km) radius centered at the AM transmitter site. The protected contour for an FM translator station is its predicted 1 mV/m contour.

* * * * *

(j) AM Fill-in area. The area within the lesser of the 2 mV/m daytime contour of the AM radio broadcast station being rebroadcast and a 25-mile (40 km) radius centered at the AM transmitter site.

■ 3. Section 74.1231 is amended by redesignating paragraph (h) as paragraph (i); adding new paragraph (h); and revising paragraphs (a) and (b) to read as follows:

§ 74.1231 Purpose and permissible service.

(a) FM translators provide a means whereby the signals of AM or FM broadcast stations may be retransmitted to areas in which direct reception of such AM or FM broadcast stations is unsatisfactory due to distance or intervening terrain barriers, and a means for AM Class D stations to continue operating at night.

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station or another translator station the signal of which is received directly through space, converted, and suitably amplified, and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section. However, an FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station that is operating on a reserved channel (Channels 201–220) and is owned and operated by the licensee of the primary noncommercial educational station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. Provided, however, that an applicant for a noncommercial educational translator operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary noncommercial educational AM or FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

(1) The applicant demonstrates that:

(i) The transmitter site of the proposed FM translator station is within 80 kilometers of the predicted 1 mV/m contour of the primary station to be rebroadcast; or,

(ii) The transmitter site of the proposed FM translator station is more than 160 kilometers from the transmitter site of any authorized full service noncommercial educational FM station; or,

(iii) The application is mutually exclusive with an application containing the showing as required by paragraph 74.1231(b)(2) (i) or (ii) of this section; or,

(iv) The application is filed after October 1, 1992.

(2) If the transmitter site of the proposed FM translator station is more than 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast or is within 160 kilometers of the transmitter site of any authorized full service noncommercial educational FM station, the applicant must show that:

(i) An alternative frequency can be used at the same site as the proposed FM translator's transmitter location and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour; or,

(ii) An alternative frequency can be used at a different site and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour.

Note: For paragraphs 74.1231(b) and 74.1231(i) of this section, auxiliary intercity relay station frequencies may be used to deliver signals to FM translator and booster stations on a secondary basis only. Such use shall not interfere with or otherwise preclude use of these frequencies for transmitting aural programming between the studio and transmitter location of a broadcast station, or between broadcast stations, as provided in paragraphs 74.531 (a) and (b) of this part. Prior to filing an application for an auxiliary intercity relay microwave frequency, the applicant shall notify the local frequency coordination committee, or, in the absence of a local frequency coordination committee, any licensees assigned the use of the proposed operating frequency in the intended location or area of operation.

* * * * *

(h) An FM translator station that rebroadcasts a Class D AM radio broadcast station as its primary station may originate programming during the hours the primary station is not operating, subject to the provisions of § 74.1263(b) of this part.

* * * * *

■ 4. Section 74.1232 is amended by adding the following sentences to the end of paragraph (d) to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(d) * * *

An FM translator providing service to an AM fill-in area will be authorized only to the permittee or licensee of the AM radio broadcast station being rebroadcast, or, in the case of an FM translator authorized to operate on an unreserved channel, to a party with a valid rebroadcast consent agreement with such a permittee or licensee to rebroadcast that station as the translator's primary station. In addition, any FM translator providing service to an AM fill-in area must have been authorized by a license or construction permit in effect as of May 1, 2009. A subsequent modification of any such FM translator will not affect its eligibility to rebroadcast an AM signal.

* * * * *

■ 5. Section 74.1263 is amended by revising paragraph (b) to read as follows:

§ 74.1263 Time of operation.

* * * * *

(b) An FM booster or FM translator station rebroadcasting the signal of an AM or FM primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted. Notwithstanding the foregoing, FM translators rebroadcasting Class D AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

* * * * *

■ 6. Section 74.1284 is amended by revising paragraphs (b) and (c) to read as follows:

§ 74.1284 Rebroadcasts.

* * * * *

(b) The licensee of an FM translator shall not rebroadcast the programs of any AM or FM broadcast station or other FM translator without obtaining prior consent of the primary station whose programs are proposed to be retransmitted. The Commission shall be notified of the call letters of each station rebroadcast and the licensee of the FM translator shall certify that written consent has been received from the licensee of the station whose programs are retransmitted.

(c) An FM translator is not authorized to rebroadcast the transmissions of any class of station other than an AM or FM

broadcast station or another FM translator.

[FR Doc. E9–21049 Filed 8–31–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0809251266–81485–02]

RIN 0648–XR11

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Massachusetts

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2009 summer flounder commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2009, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, September 1, 2009, through 2400 hours, December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah Bland, Fishery Management Specialist,(978) 281–9257.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2009 calendar year was set equal to 11,070,001 lb (5,021 mt) (74 FR 29, January 2, 2009). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 755,025 lb (342 mt). The 2009 allocation was reduced to 702,614 lb (319 mt) when research set-aside and 2008 quota overages were deducted.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2009.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, September 1, 2009, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2009 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 1, 2009, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

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

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

Dated: August 27, 2009.

James P. Burgess,

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

[FR Doc. E9–21052 Filed 8–27–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XL60

Fisheries of the Exclusive Economic Zone Off Alaska; Loan Program for Crab Quota Share; Amendment 33

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

ACTION: Final rule: agency decision.

SUMMARY: NMFS announces the approval of Amendment 33 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 33 amends the FMP to allow NMFS to reduce the amount of fees collected under the Crab Rationalization Program to the amount needed to finance the Federal loan program for quota share purchase. The amendment provides NMFS with the flexibility to reserve only the amount of fees necessary to support the loan program, including no fees if none are needed. This FMP amendment does not require modifications to Federal regulations.

DATES: This agency decision is effective on August 24, 2009.

ADDRESSES: Electronic copies of Amendment 33 and the Categorical Exclusion for this action may be obtained from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7442.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fisheries management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

In April 2008, the North Pacific Fishery Management Council (Council) unanimously recommended Amendment 33, and on May 19, 2009, submitted Amendment 33 to the Fishery Management Plan for Bering Sea/

Aleutian Islands King and Tanner Crabs (FMP) to NMFS. The notice of availability (NOA) for Amendment 33 was published in the **Federal Register** on June 1, 2009 (74 FR 26183). The public comment period closed on July 31, 2009. NMFS received no comments on the proposed amendment.

Amendment 33 allows NMFS to reduce the amount of fees collected under the Crab Rationalization Program to the amount needed to finance the Federal loan program for quota share purchase. This action allows NMFS to reserve only the amount of fees necessary to support the loan program, including no fees if none are needed. This action is necessary to ensure that fishery participants do not pay fees for loan program financing in excess of the fees needed to support the loan program. For more information on Amendment 33 a detailed description is available in the NOA.

A Categorical Exclusion was prepared for Amendment 33 concluding that the amendment will not result individually or cumulatively in significant impacts on the quality of the human environment (see **ADDRESSES**).

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

Dated: August 24, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E9–21074 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 168
Tuesday, September 1, 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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1119

Civil Penalty Factors; Withdrawal of Proposed Rule

Correction

In proposed rule document E9–20590 beginning on page 43085 in the issue of Wednesday, August 26, 2009 make the following correction:

On page 43085, in the first column, the last paragraph should read ''In a forthcoming issue of the **Federal Register**, the Commission is issuing a new interim final rule to interpret the penalty factors pursuant to section 217 of the CPSIA.''

[FR Doc. Z9–20590 Filed 8–31–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE299; Notice No. 23–09–03–SC]

Special Conditions: Cessna Aircraft Company, Model 525C; High Fuel Temperature

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company, Model 525C airplane. This airplane will have a novel or unusual design feature(s) associated with high fuel temperature. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before October 1, 2009.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE299, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE299. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE299.'' The postcard will be date stamped and returned to the commenter.

Background

On August 9, 2006, Cessna Aircraft Company applied for an amendment to Type Certificate Number A1WI to include the new model 525C (CJ4). The model 525C (CJ4), which is a derivative of the model 525B (CJ3) currently approved under Type Certificate Number A1WI, is a commuter category, low-winged monoplane with ''T'' tailed vertical and horizontal stabilizers, retractable tricycle type landing gear and twin turbofan engines mounted on the aircraft fuselage. The maximum takeoff weight is 16,950 pounds, the V_{MO}/M_{MO} is 305 KIAS/M 0.77 and maximum altitude is 45,000 feet.

The Cessna Model 525C (CJ4) fuel tank system is similar to other Cessna Model 525 designs which use the Williams FJ44 series of engine. The fuel tank system is configured to reject engine heat through the airplane fuel tank system by using an engine oil/fuel heat exchanger. Certified as part of the engine, the engine oil/fuel heat exchanger cools the oil and heats the fuel. Over time the engine manufacturers have optimized the design, size, placement, and space management of the oil/fuel heat exchanger such that today's engines now reject more heat back into the airplane fuel tank system than has existed in the past. As can be seen by the chart below we are now exposing the fuel tank system and airplane to temperatures above the critical temperature test requirements of §§ 23.961 and 23.965(d), which has been the FAA standard for fuel system hot weather operations and fuel tank test and evaluation since 1951.

Aircraft model	Engine model	Motive flow (°F)	Fuel tank (°F)	Fuel pump inlet (°F)	IM max. fuel pump inlet temp. (sea level) (°F)
525, CJ1+	FJ44–1AP	205	115	165	255
525A, CJ2	FJ44–2C	230	140	188	200
525B, CJ3	FJ44–3A	202	117	155	200

14 CFR part 23 certification experience to date has shown that fuel system hot weather certification testing with 110 °F fuel temperatures is adequate for fuel system operations for fuel tank temperatures characterized by ambient air temperatures including cooling as a result of the atmospheric temperature lapse rate. Heating of the fuel that increases the airplane fuel tank system operational temperatures introduces a number of fuel tank system and airplane concerns. Each must be shown to be acceptable. Compliance by design (*i.e.* lack of ability to shutoff the engine motive flow) may be utilized although associated type certificate data sheet information may also be necessary to assure future system changes are compliant. The following are those concerns:

- Evaluation of engine, fuel tank system and airplane performance and engine compatibility with elevated fuel tank system temperatures. [§§ 23.901(e)(1) and (e)(2), 23.939(a), and 23.951(a)]
- Evaluation of fuel tank system and airplane performance due to fuel degradation and resultant byproducts at elevated fuel tank system temperatures. [§§ 23.961, 23.939(a), 23.993(e), 23.1301, and 23.1529)]
- Evaluation of fuel tank system and airplane performance and engine compatibility due to the higher vapor/liquid ratios with elevated fuel tank system temperatures. [§§ 23.903(f), 23.951(a), 23.955(a) and (f), 23.961, and 23.1301]
- Evaluation of fuel tank system and airplane performance and engine compatibility due to the solubility of water and potential for greater microbial growth with elevated fuel tank system temperatures. [§§ 23.951(c) and 23.971]
- Evaluation of fuel tank system and airplane performance due to elevated fuel tank system material temperatures and surrounding structure compatibility. [§§ 23.613(c), 23.963(a), 23.965(d), and 23.993(e)]
- Evaluation of fuel tank system component qualification as a result of elevated fuel tank system temperatures. [§§ 23.1301 and 23.1309]
- Evaluation of service/maintenance instructions, activities and personnel due to elevated fuel tank system temperatures. [§ 23.1529]

Type Certification Basis

Under the provisions of § 21.101, Cessna Aircraft Company must show that the model 525C meets the applicable provisions of the regulations incorporated by reference in Type Certificate Number A1WI or the applicable regulations in effect on the date of application for the change to the model 525C. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' In addition, the certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special condition adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations in 14 CFR part 23 do not contain adequate or appropriate safety standards for the model 525C because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model 525C must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The model 525C will incorporate the following novel or unusual design features:

High Fuel Temperatures.

Applicability

As discussed above, these special conditions are applicable to the Model 525C. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model, model 525C, of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Aircraft Company, model 525C airplanes.

1. SC § 23.961:

Instead of compliance with § 23.961, the following apply:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, the initial temperature must be 110 °F, −0°, +5 °F or the maximum outside air temperature for which approval is requested or the fuel tank system temperature that is determined to be more critical.

Issued in Kansas City, Missouri on August 20, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21057 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0186; Directorate Identifier 2007–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes. That action (the first supplemental NPRM) would have superseded an existing AD that currently requires installing or replacing with improved parts, as applicable, the bonding straps between the metallic frame of the fillet and the wing leading edge ribs, on both the left and right sides of the airplane. The first supplemental NPRM proposed to add a requirement to reposition or replace two bonding straps for certain airplanes. This action resulted from fuel system reviews conducted by the manufacturer. This second supplemental NPRM would add, for certain airplanes, a bonding-resistance check and an inspection to determine correct installation of certain bonding straps, and applicable corrective actions. We are proposing this second supplemental NPRM to reduce the potential of ignition sources inside fuel tanks in the event of a severe lightning strike, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by September 28, 2009.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0186; Directorate Identifier 2007–NM–226–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued a notice of proposed rulemaking (NPRM) (the ''first supplemental NPRM'') to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes. The first supplemental NPRM was published in the **Federal Register** on November 26, 2008 (73 FR 71957).

The first supplemental NPRM would have superseded an existing AD that currently requires installing or replacing with improved parts, as applicable, the bonding straps between the metallic frame of the fillet and the wing leading edge ribs, on both the left and right sides of the airplane. The first supplemental NPRM proposed to add a requirement to reposition or replace two bonding straps for certain airplanes.

Actions Since First Supplemental NPRM Was Issued

Since we issued the first supplemental NPRM, Boeing has issued Service Bulletin DC10–53–109, Revision 7, dated March 3, 2009; and Service Bulletin DC10–53–111, Revision 6, dated March 3, 2009. We cited Boeing Service Bulletin DC10–53–109, Revision 6, dated July 10, 2008; and Boeing Service Bulletin DC10–53–111, Revision 5, dated March 19, 2008; in the first supplemental NPRM. The newly revised service bulletins contain the same procedures as the earlier revisions along with the following changes:

- Boeing Service Bulletin DC10–53–109, Revision 7, dated March 3, 2009, provides instructions to measure the electrical resistance of certain previously installed braided bonding straps and correct any failed resistance checks. The corrective action includes cleaning and installing the braided bonding strap assembly.
- Boeing Service Bulletin DC10–53–111, Revision 6, dated March 3, 2009, incorporates comments from operators

to clarify service bulletin instructions, including instructions for Group 1–2 airplanes, Configuration 2, to check the electrical resistance for bonding straps previously installed and correct any failed resistance checks. The corrective action includes cleaning and installing the braided bonding strap assembly. This service bulletin also includes an inspection to determine correct installation of braided bonding straps, and corrective action if necessary, for Group 1–2 airplanes, Configuration 2. The corrective action is repositioning braided bonding straps and replacing fasteners.

We have also approved the revised service bulletins as alternative methods of compliance (AMOCs) for the requirements of AD 2006–16–03.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the sole commenter, FedEx Express (FedEx).

Support for the NPRM

FedEx applauds the FAA's decision to include ''AMOCs approved previously in accordance with AD 2006–16–03 * * * as AMOCs for the corresponding provisions of this AD.'' This statement allows FedEx to use its previously obtained AMOC, dated May 24, 2007, for compliance with the bulk of the proposed requirements, without the need for additional FAA approval. Any additional work required by the AD can be incorporated into FedEx's existing modification program using the AD as approval.

Request To Provide Additional Information

FedEx requests that the section of the first supplemental NPRM titled ''Actions Since Original NPRM Was Issued'' include the following statement: ''[Boeing] Service Bulletin DC10–53–109, Revision 5, now includes an action to reposition two bonding straps by using new bonding straps that are less susceptible to cracking.'' FedEx notes that while this statement comes directly from the service bulletin section titled ''Reason for Revision,'' an examination of the changes to Boeing Service Bulletin DC10–53–109, Revision 5, dated March 19, 2008, indicates that the straps in question, which were installed according to McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 4, dated October 7, 1992, are identical to the straps that replace them in Revision 5, except the replacement straps are 2 inches longer. Revision 6, dated July 10, 2008, of this service bulletin corrects the previous statement in the ''Reason'' section as follows: ''Revision 5 was sent to incorporate engineering released subsequent to Revision 4 of this service bulletin, which replaces an existing braided bonding strap (each side) with a new longer braided bonding strap that is less susceptible to chafing structure.''

To avoid confusion, FedEx requests that we revise corresponding language in the AD to something similar to the following: ''[Boeing] Service Bulletin DC10–53–109, Revision 5, now includes an action to remove and replace two bonding straps installed via Revision 4 of the service bulletin with longer bonding straps.''

We acknowledge FedEx's concern that this language may be confusing. However, the section of the AD preamble referenced by the commenter does not appear in this second supplemental NPRM. In addition, as stated previously, this second supplemental NPRM refers to Revision 7 of Boeing Service Bulletin DC10–53–109, dated March 3, 2009, which contains the correct information in regard to this issue.

Request To Change ''Reason for Revision''

FedEx requests that we revise the reason for using Boeing Service Bulletin DC10–53–109, Revision 6, dated July 10, 2008, in the first supplemental NPRM to read ''Revision 6 of Service Bulletin DC10–53–109 provides a faster and easier method of replacing the two bonding straps that require replacement per Revision 5, and corrects some part number errors.'' FedEx also suggests that we revise the reason for using Boeing Service Bulletin DC10–53–111, Revision 5, dated March 19, 2008, as noted in the first supplemental NPRM, to read ''In addition to the effectivity correction, Revision 5 of Service Bulletin DC10–53–111 requires the repositioning of two braided bonding straps installed on certain aircraft configuration via Revision 4 and all configurations via Service Bulletin revisions released prior to Revision 4.''

We acknowledge FedEx's suggestions that the prior revisions of the service bulletins need to be clarified. However, the section of the AD preamble referenced by the commenter does not appear in this second supplemental NPRM. In addition, this second supplemental NPRM refers to Boeing Service Bulletin DC10–53–109, Revision 7, dated March 3, 2009; and Boeing Service Bulletin DC10–53–111, Revision 6, dated March 3, 2009; which contain the correct information in regard to this issue.

Request To Revise Paragraph (h) of the First Supplemental NPRM

FedEx requests that we revise paragraph (h) of the first supplemental NPRM to indicate that the action is to ''remove two braided bonding straps and install two longer braided bonding straps between the metallic frame of the fillet and the wing leading edge ribs'' in lieu of ''reposition two bonding straps.''

We concur with FedEx, and the requested changes in paragraph (h) of the first supplemental NPRM are incorporated in the new reidentified paragraph (i)(1) of this second supplemental NPRM.

In addition, FedEx believes that additional work is required for all airplanes previously modified in accordance with McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 4, dated October 7, 1992.

We agree with FedEx's request to provide clarification. Airplanes that were modified in accordance with McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 4, dated October 7, 1992, also require an electrical resistance measurement of previously installed braided bonding straps to be in compliance with the proposed requirements of this second supplemental NPRM. Revision 7 of McDonnell Douglas DC–10 Service Bulletin 53–109, dated March 3, 2009, clarifies the additional work required. We have revised paragraph (h) of the first supplemental NPRM (now paragraph (i) of this second supplmenetal NPRM) to specify the additional work required and that the additional work be accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 7, dated March 3, 2009.

Request To Clarify Procedures in Service Bulletin DC10–53–111, Revision 5

FedEx notes the following issues in Boeing Service Bulletin DC10–53–111, Revision 5, dated March 19, 2008:

- In Figure 3, the requirement to remove and install all strap brackets should be removed. Only require a conductivity check of the previously installed strap (with the exception of the single strap that will need to be relocated) with any additional rework based on the results of the conductivity check. Also include the strap to fillet seal and encapsulate with sealant all strap attach points.
- The groups and configurations callouts should be revised to distinguish airplanes that did or did not receive metal bonding straps in production and distinguish those on which a previous

version of Boeing Service Bulletin DC10–53–111 was or was not done.

• The fastener pattern in Figure 1 should be corrected by removing the middle rivet of the three rivets indicated by ''2'' in the figure and the rivet to the left of those three rivets. This would leave the figure with six evenly spaced rivets on the edge of the stiffener that receives the installation. It also makes the figure match the work instruction.

• The compliance section should be revised so that steps 6 through 13 of Figure 3 of Boeing Service Bulletin DC10–53–111, Revision 5, dated March 19, 2008, must be done on all airplanes that have been modified per Figures 1 or 2 of Boeing Service Bulletin DC10–53–111, Revision 4, dated September 21, 2006.

We infer that FedEx wants us to revise this second supplemental NPRM to provide the correct information. We agree. As stated previously, this second supplemental NPRM refers to Boeing Service Bulletin DC10–53–111, Revision 6, dated March 3, 2009, which contains the correct information in regard to these issues.

Request To Clarify Procedures in Service Bulletin DC10–53–109

FedEx requests the following clarifications of configurations and electrical bonding requirements in Boeing Service Bulletin DC10–53–109, Revision 6, dated July 10, 2008:

• Configuration 3 should apply only to airplanes previously accomplished per Boeing Service Bulletin DC10–53–109, Revision 5, dated March 19, 2008, instead of McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 4, dated October 7, 1992.

• Configurations accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 1, dated August 14, 1981; McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 2, dated October 28, 1983; McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 3, dated November 14, 1986; and McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 4, dated October 7, 1992; should each have their own specific configuration.

All previous braided straps are removed and reinstalled using proper electrical bonding procedures.

• All references to actions taken for Configuration 3 airplanes should refer to removing braided bonding straps and installing new, longer braided bonding straps.

We concur with FedEx's comments that the proper electrical bonding procedures and/or clarifications be provided in the associated Boeing service bulletins. As stated previously, this second supplemental NPRM now refers to Boeing Service Bulletin DC10–53–109, Revision 7, dated March 3, 2009, which contains instructions for conductivity checks for all previously installed braided bonding straps, as requested by FedEx. In addition, we note that Configuration 3 applies only to aircraft previously modified per McDonnell Douglas DC–10 Service Bulletin 53–109, Revision 4, dated October 7, 1992, of this service bulletin, not Boeing Service Bulletin DC10–53–109, Revision 5, dated March 19, 2008, as FedEx commented.

Explanation of Additional Paragraph in the Supplemental NPRM

We have added a new paragraph (d) to this supplemental NPRM to provide the Air Transport Association (ATA) of America code. This code is added to make this supplemental NPRM parallel with other new AD actions. We have reidentified subsequent paragraphs accordingly.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this second supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the first supplemental NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this second supplemental NPRM.

Costs of Compliance

We estimate that this proposed AD would affect 280 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
2–17	$80	Up to $4,169	Up to $5,529	281	Up to $1,553,649.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–14703 (71 FR 43962, August 3, 2006) and adding the following new AD:

McDonnell Douglas: Docket No. FAA–2007–0186; Directorate Identifier 2007–NM–226–AD.

Comments Due Date

(a) We must receive comments by September 28, 2009.

Affected ADs

(b) This AD supersedes AD 2006–16–03.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes, and MD–10–10F and MD–10–30F airplanes that have been converted from Model DC–10 series airplanes; certificated in any category; with manufacturer's fuselage numbers as identified in the applicable service bulletin listed in Table 1 of this AD.

TABLE 1—APPLICABILITY

Boeing Service Bulletin—	Revision—	Dated—	For airplanes with—
DC10–53–109	7	March 3, 2009	Extended wing-to-fuselage fillets.
DC10–53–111	6	March 3, 2009	Conventional wing-to-fuselage fillets.

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks in the event of a severe lightning strike, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2006–16–03 With New Service Information

Installation or Replacement

(g) For airplanes with manufacturer's fuselage numbers identified in the applicable service bulletin listed in Table 2 of this AD: Within 7,500 flight hours or 60 months after September 7, 2006 (the effective date of AD 2006–16–03), whichever occurs earlier: Install or replace with improved parts, as applicable, the bonding straps between the metallic frame of the fillet and the wing leading edge ribs, on both the left and right sides of the airplane, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 2 of this AD or Table 1 of this AD. After the effective date of this AD, use the applicable service bulletin identified in Table 1 of this AD.

TABLE 2—FUSELAGE NUMBERS AFFECTED BY AD 2006–16–03

McDonnell Douglas DC-10 Service Bulletin—	Revision—	Dated—	For airplanes with—
53-109	4	October 7, 1992	Extended wing-to-fuselage fillets.
53–111	3	August 24, 1992	Conventional wing-to-fuselage fillets.

New Requirements of This AD

Installation or Replacement

(h) For airplanes with fuselage numbers not identified in Table 2 of this AD except for airplanes identified in paragraph (i) or (j) of this AD: Within 7,500 flight hours or 60 months, whichever occurs first after the effective date of this AD, install or replace with improved parts, as applicable, the bonding straps between the metallic frame of the fillet and the wing leading edge ribs, on both the left and right sides of the airplane, and reposition two bonding straps. Do the actions in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

Strap Repositioning for Certain Airplanes

(i) For Group 1–4, Configuration 3 airplanes, as identified in Boeing Service Bulletin DC10–53–109, Revision 7, dated March 3, 2009: Within 7,500 flight hours or 60 months after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Remove two braided bonding straps and install two longer braided bonding straps between the metallic frame of the fillet and the wing leading edge ribs, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–53–109, Revision 7, dated March 3, 2009.

(2) Measure the resistance of the previously installed bonding straps and, before further flight, do all applicable corrective actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–53–109, Revision 7, dated March 3, 2009.

Inspection and Corrective Action for Certain Airplanes

(j) For Group 1–2, Configuration 2 airplanes, as identified in Boeing Service Bulletin DC10–53–111, Revision 6, dated March 3, 2009: Within 7,500 flight hours or 60 months after the effective date of this AD, whichever occurs first, do the actions specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) Do a general visual inspection to verify correct installation of the braided bonding strap, and, before further flight, do all applicable corrective actions, in accordance with Accomplishment Instructions of Boeing Service Bulletin DC10–53–111, Revision 6, dated March 3, 2009.

(2) Measure the resistance of the previously installed bonding straps and, before further flight, do all applicable corrective actions, in accordance with Accomplishment Instructions of Boeing Service Bulletin DC10–53–111, Revision 6, dated March 3, 2009.

Credit for Actions Accomplished In Accordance With Previous Service Information

(k) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin DC10–53–111, Revision 5, dated March 19, 2008; and Boeing Service Bulletin DC10–53–109, Revision 6, dated July 10, 2008; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2006–16–03 are approved as AMOCs for the corresponding provisions of this AD.

Issued in Renton, Washington, on August 17, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–20994 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0763; Directorate Identifier 2007–NM–301–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Excessive wear and tear of the backlash remover mechanism has been found several times on Goodrich Part Number (P/N) 23400–3B and P/N 23400–7 elevator booster control units (BCU), while corrosion has been found on some components in other BCU. The wear and tear may result in a (partly) blocked operation of the elevator system in the normal (hydraulic) mode, while any corrosion may result in deteriorated elevator control when the BCU is in MANUAL mode.

* * * * *

The unsafe condition is wear and tear, and corrosion of the backlash remover mechanism, which can cause a (partly) blocked operation of the elevator system in the normal (hydraulic) mode and deteriorated elevator control when the BCU is in MANUAL mode, which could result in loss of control of the airplane.

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

DATES: We must receive comments on this proposed AD by October 16, 2009.

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

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

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

For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L5Y7, Ontario, Canada; telephone 905–825–1568; e-mail *jean.breed@goodrich.com*; Internet *http://www.goodrich.com/TechPubs.*

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0763; Directorate Identifier 2007–NM–301–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0032, dated February 17, 2009 (referred to after this as ''the MCAI''), to correct an

unsafe condition for the specified products. The MCAI states:

Excessive wear and tear of the backlash remover mechanism has been found several times on Goodrich Part Number (P/N) 23400–3B and P/N 23400–7 elevator booster control units (BCU), while corrosion has been found on some components in other BCU. The wear and tear may result in a (partly) blocked operation of the elevator system in the normal (hydraulic) mode, while any corrosion may result in deteriorated elevator control when the BCU is in MANUAL mode.

Fokker Services and Goodrich determined that modification of the affected elevator BCU in accordance with Goodrich Component Service Bulletin (CSB) 23400–27–27 would correct this situation. * * *

[I]t has been decided to require the inspection of aircraft fitted with BCU P/N 23400–3 and P/N 23400–5 (serial numbers MC–001 through MC–288) and the modification of these units in accordance with Goodrich CSB 23400–27–15 (P/N change from 23400–3 to 23400–3B, or from 23400–5 to 23400–7, as applicable).

Previously, CAA–Netherlands AD (BLA) 93–051/3 dated 29 April 1994 [which corresponds to FAA AD 97–03–09] was issued, which requires a periodic inspection of P/N 23400–3 and P/N 23400–5 elevator BCU that could be affected by corrosion, and allows modification of the BCU in accordance with Fokker Service Bulletin SBF100–27–061 (application of Goodrich CSB 23400–27–15) as (optional) terminating action for these inspections.

* * * In addition, this AD requires the eventual replacement of all affected elevator BCU with modified units.

This new AD does not cancel the repetitive inspection requirements of CAA–NL AD (BLA) 93–051/3 for BCU P/N 23400–3 and P/N 23400–5 as long as these remain installed on any in-service aircraft.

The unsafe condition is wear and tear, and corrosion of the backlash remover mechanism, which can cause a (partly) blocked operation of the elevator system in the normal (hydraulic) mode and deteriorated elevator control when the BCU is in MANUAL mode, which could result in loss of control of the airplane. The required actions include an inspection of the backlash remover of the elevator booster control unit to determine the displacement of the pivot bolt; and if necessary, replacement of the elevator booster control unit. Depending on the measurement of the displacement, the compliance time for replacement ranges from before further flight to 3,000 flight cycles. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–27–088, dated June 4, 2007. Goodrich has issued Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 2 products of U.S. registry. We also estimate that it would take about 13 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $189 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,458, or $1,229 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2009–0763; Directorate Identifier 2007–NM–301–AD.

Comments Due Date

(a) We must receive comments by October 16, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and Mark 0100 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

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

Excessive wear and tear of the backlash remover mechanism has been found several times on Goodrich Part Number (P/N) 23400–3B and P/N 23400–7 elevator booster control units (BCU), while corrosion has been found on some components in other BCU. The wear and tear may result in a (partly) blocked operation of the elevator system in the normal (hydraulic) mode, while any corrosion may result in deteriorated elevator control when the BCU is in MANUAL mode.

Fokker Services and Goodrich determined that modification of the affected elevator BCU in accordance with Goodrich Component Service Bulletin (CSB) 23400–27–27 would correct this situation. * * *

[I]t has been decided to require the inspection of aircraft fitted with BCU P/N 23400–3 and P/N 23400–5 (serial numbers MC–001 through MC–288) and the modification of these units in accordance with Goodrich CSB 23400–27–15 (P/N change from 23400–3 to 23400–3B, or from 23400–5 to 23400–7, as applicable).

Previously, CAA-Netherlands AD (BLA) 93–051/3 dated 29 April 1994 [which corresponds to FAA AD 97–03–09] was issued, which requires a periodic inspection of P/N 23400–3 and P/N 23400–5 elevator BCU that could be affected by corrosion, and allows modification of the BCU in accordance with Fokker Service Bulletin SBF100–27–061 (application of Goodrich CSB 23400–27–15) as (optional) terminating action for these inspections.

* * * In addition, this AD requires the eventual replacement of all affected elevator BCU with modified units.

This new AD does not cancel the repetitive inspection requirements of CAA–NL AD (BLA) 93–051/3 for BCU P/N 23400–3 and P/N 23400–5 as long as these remain installed on any in-service aircraft.

The unsafe condition is wear and tear, and corrosion of the backlash remover mechanism, which can cause a (partly) blocked operation of the elevator system in the normal (hydraulic) mode and deteriorated elevator control when the BCU is in MANUAL mode, which could result in loss of control of the airplane. The required actions include an inspection of the backlash remover of the elevator booster control unit to determine the displacement of the pivot bolt; and if necessary, replacement of the elevator booster control unit. Depending on the measurement of the displacement, the compliance time for replacement ranges from before further flight to 3,000 flight cycles.

Actions and Compliance

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

(1) For airplanes equipped with booster control unit P/N 23400–3B, 23400–7, 23400–3, or 23400–5, within 12 months after the effective date of this AD, perform a one-time inspection of the elevator booster control unit in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007.

(2) At the time specified in Table 1 of this AD, and depending on the result of the inspection required by paragraph (f)(1) of this AD, replace the elevator booster control unit with a modified unit having P/N 23400–3B or P/N 23400–7, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007. The replacement part must be modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

TABLE 1—REPLACEMENT PARAMETERS

Dimension A	Replace within
A < 0.12 millimeters (mm)	Not applicable.
0.12 mm ≤ A <0.5 mm	3,000 flight cycles.
0.5 mm ≤ A < 1.0 mm	2,000 flight cycles.
1.0 mm ≤ A < 1.5 mm	1,000 flight cycles.
1.5 mm ≤ A < 2.0 mm	500 flight cycles.
2.0 mm ≤ A < 2.5 mm	125 flight cycles.
A ≥ 2.5 mm	Before further flight.

(3) Within 60 months after the effective date of this AD, replace all remaining unmodified elevator booster control units having P/N 23400–3B or P/N 23400–7 with modified units, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007. The replacement part must be modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

(4) Within 60 months after the effective date of this AD, replace all remaining elevator booster control units having P/N 23400–3 or P/N 23400–5 with modified units having part number P/N 23400–3B or P/N 23400–7, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–088, dated June 4, 2007. The replacement part must be modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

(5) As of 12 months after the effective date of this AD, no person may install a Goodrich P/N 23400–3B, P/N 23400–7, P/N 23400–3 or P/N 23400–5 elevator booster control unit on any airplane, unless the conditions of paragraph (f)(5)(i) or (f)(5)(ii), as applicable, are met.

(i) The unit has been inspected in accordance with paragraph (f)(1) of this AD, and the applicable action(s) required by paragraph (f)(2) is accomplished at the time specified in that paragraph.

(ii) The unit having P/N 23400–3B or P/N 23400–7 has been modified in accordance with Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007.

(6) As of 60 months after the effective date of this AD, no person may install a Goodrich P/N 23400–3 or P/N 23400–5 elevator booster control unit on any airplane.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from

a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0032, dated February 17, 2009; Fokker Service Bulletin SBF100–27–088, dated June 4, 2007; and Goodrich Service Bulletin 23400–27–27, Revision 1, dated September 14, 2007; for related information.

Issued in Renton, Washington, on August 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–21002 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0694; Airspace Docket No. 09–AAL–15]

Proposed Revision of Class E Airspace; Manokotak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at the Manokotak Airport at Manokotak, AK. Two Standard Instrument Approach Procedures (SIAPs) are being developed for the Manokotak Airport at Manokotak, AK. Additionally, one textual Obstacle Departure Procedure (ODP) is being developed. Adoption of this proposal would result in revising Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at the Manokotak Airport at Manokotak, AK.

DATES: Comments must be received on or before October 16, 2009.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0694/Airspace Docket No. 09–AAL–15, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0694/Airspace Docket No. 09–AAL–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71, which would revise Class E airspace at the Manokotak Airport, Manokotak, AK. The intended effect of this proposal is to revise Class E airspace upward from 700 ft. and 1,200 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Manokotak Airport, Manokotak, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has created two new SIAPs for the Manokotak Airport and one textual ODP. The SIAPs are (1) the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 03, Original and (2) the RNAV (GPS) RWY 21, Original. Textual ODPs are unnamed and are published in the front of the U.S. Terminal Procedures for Alaska. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Manokotak Airport area would be revised by this action. The proposed airspace is sufficient in size to contain aircraft executing the instrument procedures at the Manokotak Airport, Manokotak, AK.

The Class E airspace areas designated as 700/1200 foot transition areas are

published in paragraph 6005 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at Manokotak Airport, Manokotak, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Manokotak, AK [Revised]

Manokotak Airport, Manokotak, AK
(Lat. 58°55′55″ N., long. 158°54′07″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Manokotak Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Manokotak Airport, AK.

* * * * *

Issued in Anchorage, AK, on August 20, 2009.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–21055 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0154]

RIN 2127–AK52

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Cameron Gulbransen Kids Transportation Safety Act of 2007 (the ''K.T. Safety Act of 2007'') directs NHTSA to consider amending the Federal motor vehicle safety standard aimed at minimizing the likelihood of death or injury from the accidental operation of power window systems. The amendment would require power windows and panels on motor vehicles to automatically reverse direction when such power windows and panels detect an obstruction to prevent children and others from being trapped, injured, or killed. In the event that NHTSA chooses not to require power windows and panels on motor vehicles to automatically reverse direction when such power windows and panels detect an obstruction, the Act requires that the agency submit a report to Congress describing why such standards were not prescribed and publish a list of vehicles that are or are not equipped with power windows and panels that automatically reverse direction when an obstruction is detected.

In this document, NHTSA summarizes its most recent rulemakings related to power window hazards and the types of injuries and fatalities they were aimed at mitigating; discusses its current assessment of the number and causes of the remaining deaths and injuries related to power windows; and analyzes the means of mitigating those remaining injuries and fatalities. While the agency analyzed and considered the benefits of installing automatic reversal systems in all types of vehicle windows, including front and rear main windows, sunroofs, and small ''vent'' windows, NHTSA is proposing to require automatic reversal systems on ''express-up'' or ''one-touch closing'' windows, i.e., those windows that close without continuous actuation of the window switch by the window operator. We believe that this is an efficient, targeted rule that would close this gap in our power window safety requirements. We are also seeking comments on a broader requirement for automatic reversal systems, and could include such a requirement in a final rule. Additionally, we will be providing consumers with information regarding which vehicles are equipped with automatic reversal systems at *http://www.safercar.gov* by October 2009.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than November 2, 2009.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document 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:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Mr. Michael Pyne, Office of Rulemaking (*E-mail: mike.pyne@dot.gov*) (Telephone: 202–366–2720) (Fax: 202–493–2739). For legal issues, you may contact Mr. Ari Scott, Office of Chief Counsel (*E-mail: ari.scott@dot.gov*) (Telephone: 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. Executive Summary
II. Cameron Gulbransen Kids Transportation Safety Act of 2007
III. Background
  a. Power Window Related Injuries and Past Efforts To Combat Them
  b. Information on Automatic Reversal Systems (ARS)
IV. Safety Issues Addressed in This Rulemaking
  a. Fatalities and Severe Injuries
  b. Less Severe Injuries
V. Current Regulatory Requirements for ARS
  a. Key Requirements of S4
  b. ARS Requirements of S5
  c. Safer Switches Requirements
  d. Requirements of ECE R21
VI. Current Implementation of ARS and Compliance With FMVSS No. 118 in the United States
  a. Differences in FMVSS and ECE Performance Specifications
  b. Implementation of ARS in the U.S. and Other Countries
VII. Expanding ARS To Various Subsets of Windows
  a. Windows Equipped With ''Express-Up''
  b. Main Windows Not Equipped With Express-Up
  c. Sunroofs and Power Vent Windows
  d. Lockout Switch Considerations
VIII. Proposal To Mandate That Main Windows With Express-Up Be Equipped With ARS
  a. Costs and Benefits
  b. Listing of Power Windows Without ARS
IX. Public Participation
X. Regulatory Analyses
XI. Proposed Regulatory Text

I. Executive Summary

Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-operated window, partition, and roof panel systems*[1] specifies requirements for power operated window, partition, and roof panel systems to minimize the likelihood of death or injury from the accidental operation. The National Highway Traffic Safety Administration (NHTSA) has reevaluated the safety concerns inherent in the operation of power windows and is proposing an amendment to ensure that the requirements of the standard address a safety problem that is not addressed by the current requirements. This rulemaking is being undertaken in response to the Cameron Gulbransen Kids Transportation Safety Act of 2007 (the ''K.T. Safety Act of 2007''),[2] in which Congress required NHTSA to consider requiring automatic reversal systems (ARS) on all power windows for light passenger vehicles.

While the K.T. Safety Act of 2007 required that NHTSA consider requiring ARS on all power windows in vehicles, the agency has tentatively determined that the scope of the power window safety issue can be effectively addressed without mandating ARS on all windows. In large part, this is because NHTSA has recently addressed the majority of the safety problem associated with power windows by establishing new ''safer switch'' requirements. Under these new requirements, as of October 1, 2008, vehicles with power windows must have switches designed to prevent inadvertent actuation. In promulgating that earlier rule, we believed that the fatalities associated with power windows were largely due to this type of incident.[3] We continue to believe that the ''safer switch'' rule will have the effect of eliminating the majority of the most severe power window-related incidents. Thus, in evaluating the remaining safety issues that an automatic reversal system could address, the data indicate that there are few if any fatalities and serious injuries remaining.

Despite the small relative size of the problem, NHTSA's assessment did show one area in which it may be possible to improve safety. This is with regard to windows that close with one touch of the switch (referred to as ''express-up'' functionality). Because closing these windows does not require the continuous engagement of a human operator, we believe there is a potential risk of injury to persons in or around the vehicle. We are accordingly proposing to require automatic reversal systems on those windows that close without continuous actuation of the window switch by the window operator. We are also seeking comments on a broader requirement for automatic reversal systems, and could include such a requirement in a final rule. Additionally, in order to provide comprehensive information on the subject and per the direction of the K.T. Safety Act of 2007, we will be providing consumers with information regarding which vehicles are equipped with ARS. We expect to provide this information on *http://www.safercar.gov* by October 2009.

II. Cameron Gulbransen Kids Transportation Safety Act of 2007

Subsection (b) of the Cameron Gulbransen Kids Transportation Safety Act, directs the Secretary of Transportation to initiate a rulemaking to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-operated window, partition, and roof panel systems,* to consider requiring power windows and panels on motor vehicles to automatically reverse direction when they detect an obstruction.

The relevant provisions in subsection (a) are as follows:

(a) Power Window Safety.—

(1) Consideration of Rule.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation

[1] 49 CFR 571.118.

[2] Pub. L. 100–189, February 28, 2008, 122 Stat 639.

[3] We note that these incidents typically occurred when children were left in vehicles *with the ignition on*. In these cases, removal of the ignition key would have disabled the power windows, as required by a longstanding FMVSS No. 118 criterion.

(referred to in this Act as the ''Secretary'') shall initiate a rulemaking to consider prescribing or amending Federal motor vehicle safety standards to require power windows and panels on motor vehicles to automatically reverse direction when such power windows and panels detect an obstruction to prevent children and others from being trapped, injured, or killed.

(2) Deadline for Decision.—If the Secretary determines such safety standards are reasonable, practicable, and appropriate, the Secretary shall prescribe, under section 30111 of title 49, United States Code, the safety standards described in paragraph (1) not later than 30 months after the date of enactment of this Act. If the Secretary determines that no additional safety standards are reasonable, practicable, and appropriate, the Secretary shall—

(A) not later than 30 months after the date of enactment of this Act, transmit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate describing the reasons such standards were not prescribed; and

(B) publish and otherwise make available to the public through the Internet and other means (such as the ''Buying a Safer Car'' brochure) information regarding which vehicles are or are not equipped with power windows and panels that automatically reverse direction when an obstruction is detected.

(c) Phase-In Period—

(1) Phase-In Period Required—The safety standards prescribed pursuant to subsections (a) and (b) shall establish a phase-in period for compliance, as determined by the Secretary, and require full compliance with the safety standards not later than 48 months after the date on which the final rule is issued.

Applicability

With regard to the scope of vehicles covered by the mandate, the Act refers to all motor vehicles less than 10,000 pounds (except motorcycles and trailers) in gross vehicular weight. This language means that the revised regulation would apply to passenger cars, multipurpose passenger vehicles, buses, and trucks with a Gross Vehicle Weight Rating (GVWR) less than 10,000 lbs (4,536 kg).

Statutory Deadline

The Cameron Gulbransen Kids Transportation Safety Act of 2007 specified a rapid timeline for development and implementation of this rulemaking. Specifically, the Secretary is required to publish a final rule within 30 months of the passage of the Act (August 28, 2010). Moreover, the agency must initiate rulemaking within 18 months of the Act (August 28, 2009). However, it should be noted that under Section 4 of the Act, if the Secretary determines that the deadlines applicable under this Act cannot be met, the Secretary shall establish new deadlines, and notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the new deadlines and describe the reasons the deadlines specified under the Act could not be met.

III. Background

a. Power Window Related Injuries and Past Efforts To Combat Them

The matter of preventing injuries and fatalities that occur through the operation of power window systems is one that has been considered numerous times by NHTSA. These kinds of injuries fall into two predominant categories. Most severe, but most infrequent, are cases in which occupants, usually young children, are killed through strangulation or compression when trapped by a closing power window system. Even when no fatality occurs, serious brain or bodily injury can result when the neck, body, or a limb is trapped in a closing power window for a prolonged period of time. Much more common, although less severe, are injuries that occur when a power window closes on a person's hand or finger. Unlike the more severe types of incidents involving power windows, which usually involve occupants, these types of injuries also frequently involve non-occupants, such as those who are grasping the window or door frame from the outside of the vehicle, such as to open a vehicle door.

Due to the nature of power window-related injuries and fatalities, many of which occur off of public roadways, or otherwise may not be reported to authorities as automobile-related incidents specifically, it has been difficult to quantify the exact extent of this problem. However, based on analysis described below and in the accompanying Preliminary Regulatory Evaluation (PRE), included in the docket with this notice, we estimate that approximately 6 fatalities and 1,955 injuries result every year from the operation of vehicle power window systems.

In order to prevent deaths and injuries that can occur from the operation of powered vehicle windows, there are several technical design features that can be implemented. These include modification of the window switch to prevent inadvertent actuation, additional window-closing safeguards such as lockout switches that prevent children from operating the windows, or installation of an automatic reversal system (ARS), which would cause the window to stop and reverse direction when it senses an obstruction in the window-closing path.

NHTSA has addressed the problem of power window safety through two prior rulemakings dealing with the switch design. Both of these rulemakings essentially addressed the same problem, which is what we call an ''inadvertent actuation'' of the window switch. Inadvertent actuation had been the root cause of the most serious and tragic power window safety incidents. In these events, an occupant, typically a toddler, would kneel, stand or lean on the door panel or armrest with his or her head or body outside an open window. Then the child occupant would inadvertently activate a ''toggle'' or ''rocker'' switch located in the armrest or door panel with his/her foot or knee, thereby closing the window. The result could be death or serious injury to the child.

NHTSA's response was to create a performance requirement for the power window switch, which mandated that the switch not be able to be activated by application of a metal sphere with the approximate diameter of a child's knee (this procedure is commonly known as the ''ball test'').[4] Following passage of SAFETEA–LU,[5] NHTSA further amended the standard to permit only ''pull-to-close'' window switch designs, which require that the user physically pull upward or outward on the switch in order to close the window.

In the K.T. Safety Act of 2007, Congress again addressed the issue of power window safety. This time, instead of focusing on the switches, Congress required the agency to consider the possibility of requiring automatic reversal systems (ARS) on all windows in passenger vehicles. Unlike safer switches, ARS can be effective in cases not only of inadvertent actuation, but also instances where the operator of a window is closing the window, but is unaware that another person's body may be obstructing the window. In this document, we are referring to this type of incident, generally, as an ''obstructed closing.''

While incidents involving inadvertent actuation of the window switch account for a large proportion of severe injuries and fatalities, incidents involving obstructed closings are more common, but also generally less severe than inadvertent actuations. Based on our analysis of the data, the overwhelming

[4] 69 FR 55517, September 15, 2004.

[5] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, § 1109, 119 Stat. 1114, 1168 (2005).

majority of these types of incidents involve injuries to fingers, hands, and arms that were caught in the path of a closing window as the occupant or driver closed a window. These injuries generally translate to the AIS 1 level on the Abbreviated Injury System (AIS) scale, the lowest classification available. However, there were still some instances in which obstructed closings led to more severe injuries, especially when a person's body, neck, or head was in the path of a window being closed. Other injuries were due to cases such as a piece of clothing or jewelry, such as an earring, becoming ensnared on a power window.

Prior to the K.T. Safety Act of 2007, in response to petitions, NHTSA had evaluated the possibility of mandating ARS on all vehicle windows. However, in response to each petition, NHTSA declined to do so, because the requirements to prevent inadvertent actuation had addressed nearly all the safety risk from power windows. Most recently, in the rulemaking requiring safer switch designs, NHTSA again analyzed the possibility of requiring ARS, but concluded that the safer switch requirement would prevent a large proportion of the injuries associated with power windows.[6]

Despite NHTSA's past position, in this document we are taking a new look at ARS and attempting to determine whether it would be an effective means of enhancing safety at this time. In doing so, we conducted more detailed investigations into the number of incidents involving power windows, the percentage of those that could have been prevented by ARS, and the cost of installing ARS. We have further broken down the analysis to examine scenarios where ARS is installed on three different window groups, namely, those equipped with an express-up feature, main (front and rear) power windows not equipped with express-up, as well as the possibility of installing ARS on sunroofs and power vent windows.

b. Information on Automatic Reversal Systems (ARS)

Since the early 1990s when ARS was first introduced as a feature on a few luxury cars in the U.S., there have been a variety of technologies considered as the basis for ARS. These technologies fall into two main categories. The first category is *contact-based* or ''force-sensing'' systems which require contact between the window and an obstruction, *i.e.,* they sense the build-up of resistive force that occurs when an object like a person's hand or arm is trapped between the frame and glass of a closing window. The second category is *non-contact* systems. Among the concepts in the latter category are light beam interruption (''electric eye'') systems, infrared and ultrasonic scanning systems, and capacitive sensing systems. (There is also a type of system that is integrated into window seals (seal-based) that requires incidental contact with the window perimeter to close an electric circuit. Since it does not rely on a build up of pinch force, it is included in the non-contact category.)

In a 2004 final rule,[7] NHTSA amended the FMVSS No. 118 automatic reversal requirements. These requirements, set forth is paragraph S5 of the standard, permit the windows to close in unsupervised situations, but require a higher level of reversal performance than many ARS in use today that are installed in S4-compliant (supervised closing only) vehicles. This amendment was made to accommodate an infrared ARS which was then under development by an automotive supplier. The amendment added to the standard new test rod specifications intended to facilitate testing of systems that sense obstructions by infrared reflection. However, to the best of our knowledge, no such system was ever put into production for use in U.S. vehicles.

It has been our observation that contact-based and force-sensing ARSs are the prevailing types of technology that have been broadly applied in light vehicles. They are designed to monitor electric current to the window drive motor and to reverse the motor by recognizing current spikes that exceed pre-determined limits. Force-sensing systems have also been designed to function by counting rotations of the window drive motor. Through a logic circuit, they are able to identify the window position relative to fully closed and can reverse the motor if there is a sudden change in the rotations per unit time prior to the window reaching the fully closed position. Our understanding is that this latter technology is favored in contemporary automatic reversal systems.

Over time, the technology has been improved where contact-based ARSs appear to have become sophisticated enough to differentiate between entrapments and other sources of window resistance and to have minimized some of the shortcomings that were characteristic of older force-sensing systems. At one time, the available ARS technology was somewhat unreliable when the presence of snow or ice, or even window seals that had become un-pliable in very cold conditions, resulting in high closing resistance and the likelihood of false reversals. Additionally, some current generation ARSs have been designed to be inactive during the normal closure mode (*i.e.,* when the power window switch was continuously held in the window closing position), or they have an override feature. Although newer ARS operate more reliably under adverse conditions, they still provide this override feature.[8]

Despite the continual improvement in force-sensing ARS technology, no current systems are certified as meeting the requirements of S5.

We have considered whether it may be possible for manufacturers to produce effective ARS systems that are less costly. We note that most current ARS are installed on a window-by-window basis, rather than using a centralized processor for the directional control of all of the windows. Therefore, each ARS-equipped window contains a motor, sensor, and processor to control the motor for ARS functionality (although the sensor and motor can be integrated into one unit). Because of this segmentation, the cost of installing ARS generally scales up with the number of windows it is installed on (*e.g.,* the cost of installing ARS on four windows is approximately twice the cost of installing it on two windows).

The agency considered whether centralized processors could be used to consolidate the costs of ARS applications in multiple windows (thereby only requiring the motor and sensor to be installed in the individual windows). However, our current information indicates that this would not be a way of reducing costs compared to putting an independent ARS in each equipped window, for reasons described below.

There are several problems with installing centralized ARS processors that can lead to increased costs or degraded system performance. These problems include power/signal degradation through the wires connecting the window motors to the centralized processor, the need for ARS suppliers to have ''full system understanding,'' and the high cost of the

[6] In the September 15, 2004 Final Rule (69 FR 55517), NHTSA denied three petitions, from Michael Garth Moore, David W. Little, and a coalition of auto safety advocates including Kids and Cars, requesting that the agency require ARS as a standard safety feature for power windows.

[7] 69 FR 55517, September 15, 2004.

[8] An ARS equipment supplier, Nartron, stated that another reason is to allow a customer the convenience of wedging something between the window glass and the seal or the hypothetical scenario where an intruder is trying to gain access into an occupied vehicle through an open window.

centralized processor itself, compared to the costs of individual processors for each window's ARS. Based on our understanding of various systems, these factors have the effect of increasing the costs of a centralized system beyond the costs of individualized sensors. However, NHTSA welcomes comments relating to centrally-controlled ARS, its costs, and its relative benefits or drawbacks.

IV. Safety Issues Addressed in This Rulemaking

In two previous rulemakings relating to power window switches, we had estimated an average of only two fatalities occurred per year due to the operation of power windows. Those rulemakings, which mandated safer window switches designs in order to prevent inadvertent power window actuation, were estimated to have prevented half of all power window-related fatalities, on the order of one per year.

In accordance with the mandate in the K.T. Safety Act of 2007, we have closely reexamined the fatalities and injuries associated with the functioning of power windows. We used a variety of surveys and case studies to obtain a more recent determination of fatalities and serious injuries relating to this issue. Additionally, we analyzed data taken from a sample of hospital emergency room records to compile a more comprehensive picture of the injuries associated with power windows. These studies presented a more comprehensive picture of the safety problem.

We note that the initial iteration of the safer switches rule (mandating the ball test) only came into effect on September 1, 2008, and the second iteration (the ''pull-to-close'' requirement) is not fully effective until October 1, 2010. Therefore, given the overall population of vehicles and the dates of the data collected, the vast majority of injuries and fatalities captured by our studies occurred in vehicles that were not subject to these safer switch requirements.[9] Based on the availability of information on more cases, the agency now estimates that safer switches are likely to prevent 50 to 75 percent of all power window-related fatalities. Therefore, in determining the likely benefits of mandating ARS technology, NHTSA is estimating that 62.5 percent (the mid-point of this range) of the serious injuries and fatalities captured in our studies would have been prevented by safer switches (had they been installed fleet-wide), and therefore cannot be factored in when determining the benefits of mandatory ARS. This is a little higher than our earlier estimates for the benefits of the safer switches rulemaking.

In order to develop an up-to-date and more comprehensive tabulation of the data on fatalities and severe injuries associated with power windows, NHTSA acquired data from a variety of sources. NHTSA obtained mortality data from the Center for Health Statistics' National Vital Statistics System (NVSS) for 2003 and 2004, using death certificates. We also used Special Crash Investigation (SCI) data to further develop our understanding of power window related incidents. While the SCI case reviews are not a comprehensive sample of all incidents, they provide detailed information about how the incidents occurred, and the data also can be also used to extrapolate the relative ratio of those incidents that would have been prevented by safer switches, and those that would have been mitigated if a vehicle had an ARS. Finally we searched for severe injuries in the Consumer Product Safety Commission's National Electronic Injury Surveillance System All Injury Program (NEISS–AIP) statistical sample of emergency department records from 2004 through 2007. The results of our searches are summarized in the following table:

Data source	Fatalities	Severe injuries
NVSS 2003–2004	12	.....
SCI Oct. 2006–Mar. 2009	2	1
NEISS–AIP 2004–2007	.....	3

To better analyze the remaining safety problem associated with power windows, NHTSA wanted to focus on the injuries and fatalities that ARS could address. As such, for the purposes of this analysis, we have made a distinction between two broad types of injuries and fatalities. This is because they can occur for different reasons and require different preventative measures to mitigate them. The first type includes fatalities and severe injuries resulting from asphyxia when a power window is closed on the chest or neck of a victim. The second type includes the type of injuries that occur when fingers, hands, or limbs are trapped in power windows, which can result in bruises, broken bones, and more severe injuries.

a. Fatalities and Severe Injuries

The most serious aspect of the safety concern is the fatalities and severe injuries that can result from asphyxiation when a child is trapped in a power window. There are several scenarios where this can occur. The most common is a situation that NHTSA has attempted to address in the past, which are inadvertent actuation scenarios where a child inadvertently activates the power window (typically, using his or her foot or knee), while leaning out the window. This problem, we believe, will largely be alleviated by the safer switches rulemakings, which prevent this sort of actuation by requiring that a switch require a pulling-out motion to close the window. All vehicles already are required to meet the performance specifications of the ball test, and will need to meet the pull-to-close specifications beginning October 1, 2010. Therefore, when calculating the benefits of the installation of ARS, we exclude those injuries and fatalities that would have already been prevented had the vehicles been equipped with safer switches.

However, asphyxiation can also occur when a driver closes another occupant's window from the driver controls, without knowing that a passenger is entrapped in the closing window. Given that this type of actuation has nothing to do with the switch design, we would not expect the safer switch regulations to have any effect on this type of incident. Nor would lockout switches have any effect, as the window is being operated by the driver, and not the occupant in the seat. Incidents like these may only be prevented by an ARS having appropriate override safeguards

[9] As shown below and in the accompanying regulatory evaluation, most of the vehicles examined were built prior to 2006.

that function in such a way that they do not prevent an ARS from engaging when the window is operated by a single, continuous activation of the window switch.

Our search of the mortality data uncovered 12 fatalities over a two-year-period that were likely related to power windows, all of which were caused by asphyxiation. Close examination of the death certificate records, however, provided only three cases where enough information was provided to determine what could have prevented the incident. Of those three, we believe that all three would have been prevented by safer switches.

SCI investigations to date have produced three reports detailing severe injuries and fatalities relating to power windows. Of those, one appeared to be an inadvertent closing cause by a child and could have been prevented by safer switches. A second case involved an injury caused by a driver using her window controls to close a rear window, unaware that a child had become entrapped in the process, and may have been preventable with an ARS (assuming that the driver was not engaging an ARS override feature). In the third case, it is not clear whether the driver or the child caused the fatal window closure incident. It is our belief that ARS, with appropriate override safeguards, may be the only effective current technology that could prevent cases like the one in which the driver unknowingly closed the window on an adult rear seat occupant or unrestrained child rear seat occupant.

An SCI case ultimately involving no serious injury has also been reported. In that case, an unattended child closed a rear window on herself and was strangled, but was discovered and released from the window in time to be revived via CPR. In that case, we believe safer switches would have prevented the entrapment.

Finally, the search of the NEISS–AIP sample identified three cases of severe injuries (Maximum Abbreviated Injury Scale (MAIS) 5). In two of the cases, the child was left unsupervised or unattended inside the vehicle, and we believe that these cases would have been preventable with safer switches. The third case did not provide enough information to make a determination.

In summary, the agency estimates that there are 6 fatalities and 12 AIS 5 critical level non-fatal injuries annually due to power windows.

b. Less Severe Injuries

In addition to the MAIS 5 (critical injuries) and fatalities, NHTSA's examination of the data indicated that there were a substantial number of less severe injuries related to the operation of power windows. For purposes of this document, we classified as ''finger'' injuries those that could be translated to MAIS 1–3 injuries, which typically included bruises, broken bones, and severed fingers. Based on our data, we estimate that there are approximately 1,943 injuries of this type per year. This is broken down to 1,726 MAIS 1, 196 MAIS 2, and 21 MAIS 3 injuries. We also realize that this may be a low estimate, because our analysis was based primarily on narratives taken from emergency rooms. We do not believe that every injury caused by a power window entrapment of a limb would have resulted in immediate medical treatment, so we are reasonably confident that our analysis depicts a floor, rather than a ceiling, in terms of the overall number of finger injuries. We have detailed how we arrived at the estimate in the companion PRE.

V. Current Regulatory Requirements for ARS

FMVSS No. 118 currently specifies requirements for power-operated window, partition, and roof panel systems [10] in motor vehicles to minimize the risk of injury or death from their inadvertent operation. These requirements apply to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 4,536 kilograms (10,000 lbs.) or less, and provide a substantial degree of protection from injuries that can result from the operation of power windows, especially in relation to children. FMVSS No. 118 offers manufacturers several means of compliance, depending on design preferences. Among the provisions at issue, FMVSS No. 118 provides different means of protection to prevent unintentional window injuries, the ignition key requirements of paragraph S4 and the ARS requirements of S5. Paragraph S4 relies on the presence of the vehicle operator or ignition key holder to ensure safety, whereas paragraph S5 is a more technology-centric solution that allows greater design flexibility, although is costlier to comply with.

Additionally, the agency has recently amended the standard to include a requirement (reflected in paragraph S6) that window switches be resistant to inadvertent actuation, a major contributor to power window related injuries to children. This requirement mandates that all power window switches be designed as ''pull-to-close'' switches. This type of switch can help to prevent a large percentage of the injuries that result when an object (*e.g.,* a child's foot, knee, pet, or other object) might otherwise cause the power window to close at a time when the occupant does not intend to cause it to do so. This is a switch level of protection above the ''ball test'' effective September 1, 2008.

a. Key Requirements of S4

The first level of protection, for windows that can only be activated when the ignition key is in (or near) the ignition, is enumerated in paragraph S4 of the standard. The provisions of S4 include the fundamental requirement that power windows must not be operable unless the vehicle's ignition switch is in the ''On,'' ''Start,'' or ''Accessory'' position. In this way, the standard provides a simple means (*i.e.,* ignition key removal) by which a vehicle's windows can be disabled and thus safeguarded from inadvertent closure. Paragraph S4 specifies several exceptions where power windows may close without the vehicle's ignition being turned on (*e.g.,* by use of a limited-range remote control), but each exception is specified in such a way that safety can still be assured by the presence of a responsible operator.

The underlying rationale for the requirements in paragraph S4 is that, under its strictures, the windows of a vehicle cannot be operated outside of the presence of the vehicle operator. By simple ignition key removal from the vehicle, it ensures that children in a vehicle will not be able to operate the windows. In situations where the key is still in the ignition in the ''On,'' ''Start,'' or ''Accessory'' position, the driver or other responsible party is presumed to be in the vehicle, and can thus react to potential incidents involving the operation of the windows. Paragraph S4 also allows design flexibility, such as permitting a limited-range remote control to operate the vehicle windows, which allow users additional control over their systems, while limiting that control to situations where the vehicle operator is present to ensure that there is no danger from unattended, operational power windows.

b. ARS Requirements of S5

Paragraph S5 of FMVSS No. 118 allows an alternative means of compliance through the use of power

[10] The term ''power window'' is used in the preamble of this final rule to refer to power-operated windows, interior partitions, and roof panels, all of which are covered by FMVSS No. 118. Power roof panels and partitions are similar to power windows in their operation. However, any distinctions in applicability among the three types of systems will be delineated clearly in both the preamble and the amended regulatory text.

window automatic reversal systems. If such a system is used in a vehicle and it meets the specified performance requirements of the standard, then the vehicle is not required to meet the window operating restrictions of paragraph S4. The ARS requirements set forth in this paragraph allow power windows to be operated safely in circumstances where no supervision is present. For example, vehicles equipped with S5-compliant ARSs can have the windows close in the event that the vehicle detects precipitation or the windows are controlled remotely without being observed. In these situations, while there is the distinct possibility that an unattended child may be positioned in an otherwise dangerous manner with regard to the closing window, the ARS system assures that no injuries will result.

The ARS performance requirements of paragraph S5 have the effect of requiring that a closing window stop and reverse direction in 0.015 seconds.[11] Additionally, the test procedure specifies the use of a rod that is not perpendicularly oriented (with respect to the window), which requires additional refinement of the ARS by the manufacturer due to the fact that an angled test rod, placed in the corner of a window, can cause the window to ''scissor'' rather than reverse, thereby failing the performance requirements of FMVSS No. 118. Most vehicle manufacturers (even those with an ARS), have certified compliance with the ignition key requirements of paragraph S4. We note that this does not necessarily mean that the windows would not have met the more stringent S5 requirements. Because ARS helps to ensure protection even when no supervision is present, they give vehicle manufacturers a compliance option with maximum design freedom compared to the relatively limited operating conditions allowed under section S4.

One option that is currently under consideration by NHTSA, although not in the proposed regulatory text in this document, is replacing the performance specification currently in paragraph S5 with the specifications listed in United Nations Economic Commission for Europe (ECE) R21. NHTSA is considering this as a possibility and notes that this might be included in the text of a final rule. As we have stated above and implied in previous notices, the primary difference, in terms of safety considerations, between the two specifications is the potential effect on very small fingers.[12] NHTSA believes that the S5 specification will prevent injury, with approximately a 98 percent success rate, to even a single child's finger entrapped in a closing window. Conversely, because the ECE specification does not require that the window reverse in the same timeframe, and tests the reversal feature only with a perpendicular-oriented test rod, there may be a greater possibility that children's fingers could be injured if an ARS were designed to meet only the ECE R21 specifications.

NHTSA is requesting comment on the idea of replacing the ARS specification in paragraph S5 with the ECE specifications. By specifying a very ambitious S5 ARS requirement in order to prevent injuries to fingers, the difficulty and expense of meeting the S5 requirement may have discouraged the implementation of perhaps only slightly less robust systems that could have prevented fatalities and serious injuries involving asphyxiation of young children.[13] We also note that, unlike today, at the time of the development of the current performance requirements, the alternative requirements now specified in ECE R21 were not in widespread use. We request comment on whether there have been significant number of injuries to extremities caused by power windows equipped with ECE R21-compliant ARS.

No vehicle manufacturer to date has certified a vehicle to comply with the S5 specification for ARS. Instead, all vehicles currently sold in the U.S. with power windows have been certified to comply with the key requirements of S4. This, by definition, prohibits the installation of original equipment ''smart windows,'' long-range remote controls, or other conveniences that are available only to vehicles certified to comply with S5. The agency believes there is a possibility, if the technical requirements for ARS were made to be more achievable and less expensive, that it would encourage manufacturers to install more of these advanced power window features. As such, we are requesting comment on replacing the specification for ARS currently contained in FMVSS No. 118 with the specification and test procedure for ARS in ECE R21. We are interested in receiving input from manufacturers and other interested parties as to whether such a change would encourage the installation of additional power windows with ARS and certification to the requirements of (a revised) paragraph S5.

In requesting this information, NHTSA is also concerned that any reduction in the ARS performance specifications could result in increased finger injuries. In designing the S5 specification, NHTSA made a judgment that there was a risk that the German specification (that would ultimately form the basis for that part of ECE R21) might not prevent all injuries to children's fingers. Specifically, the agency was concerned that because the German specification permitted more compression (approximately 10 mm of compression before reversal) prior to reversal than the current S5 specification in FMVSS No. 118 does (1.5 mm of compression before reversing), permitting it in windows that can close when unsupervised by an operator could permit injuries to fingers and hands that are caught in the windows that do not occur with the current regulatory provisions.[14] However, we believe that there are good reasons to revisit those assumptions. First, we are aware that many installed ARSs in fact exceed the minimum-specified reversal requirements, so the danger to children's fingers and hands may be even less than originally considered. Second, ECE R21-compliant ARS windows have, since the 1993 final rule, been installed in numerous vehicles worldwide. This affords the opportunity for more data to have been accumulated than was available at the time the original S5 specification was written, and we request comment on the number of estimated finger injuries, especially to children, that can be attributed to windows equipped with an ECE R21-compliant ARS.

c. Safer Switches Requirements

NHTSA amended FMVSS No. 118 in 2004 to safeguard the switches that operate power windows in vehicles. In that amendment, NHTSA introduced a switch test requirement, referred to as the ''ball test,'' adding a new section S6 to the safety standard. According to the new test procedure, a 1.5 inch diameter

[11] Assuming a window closing speed of 100 mm/sec, and the test rod requirements of S8.1.

[12] See, *e.g.,* 58 FR 16782, at 16783, March 31, 1993. In that notice, NHTSA rejected the petitioner's 10 N/mm value for the test rod stiffness due to the estimated 10 mm of compression that would occur before reversal, instead using a test rod with a stiffness of 65 N/mm, which would permit only 1.5 mm of compression before reversing. The agency stated that ''[a] child's finger placed in a 10 mm opening could be severely injured in such a situation.''

[13] We note that the agency estimated there are approximately two fatalities and four serious injuries per year that will not be prevented by safer switches. Either ECE R21-compliant or S5-compliant ARS, however, would prevent these injuries and fatalities.

[14] The agency simply stated that, ''[t]he available crush space for small openings must be limited; fingers placed in a small opening can be injured even if the [window] opening is reduced by only a few millimeters.'' 58 FR 17683, March 31, 1993.

rigid ball is applied with a specified force and direction to each switch which controls the closing of a power window or sunroof.[15] This test methodology was conceived of as simulating the action of a small child's knee on a switch. To pass the test, a switch has to be adequately recessed, shrouded, or otherwise configured so as to resist actuation by the test ball, and the window must be prevented from closing when contacted by the ball, thus preventing window closure.

The requirements of the new section S6 took effect on October 1, 2008, meaning that the power window switches in all vehicles manufactured on or after that date subject to FMVSS No. 118 must comply with the ball test. Later in 2004, Congress enacted the SAFETEA–LU legislation which included a mandate for NHTSA. Acting on this mandate, the agency again issued an amendment of FMVSS No. 118 affecting power window switches. SAFETEA–LU mandated that NHTSA limit power window switches to a pull-to-close type, thereby prohibiting other types of switches which may have complied with the ball test, such as recessed toggle or rocker switches. Between the two rulemakings, the agency believes that it has eliminated all of the injuries and fatalities that were caused by inadvertent actuation of power windows.

d. Requirements of ECE R21

The European safety requirements for power windows are included in an Economic Commission for Europe (ECE) regulation. That regulation, ECE No. 21, is titled *Uniform Provisions Concerning the Approval of Vehicles with Regard to Their Interior Fittings.* It covers the safety and other regulated aspects of numerous parts in the passenger compartments of vehicles, including, among others, controls, fittings, seat backs, and also power-operated windows.

The power window requirements are set forth in section 5.8 of ECE R21. There are two main sections, section 5.8.2 which deals with normal power window operating requirements, and section 5.8.3 which deals with automatic-reversing requirements.

Section 5.8.2 of ECE R21 specifies that windows can operate only under certain limited conditions, primarily with the ignition key in the ignition. It also allows window operation by a key lock on the exterior of the vehicle, by limited range remote controls, and during the time interval between removal of the ignition key and opening of a front door.

Section 5.8.3 states that power windows equipped with auto-reversing capability do not have to meet section 5.8.2 if the auto-reversing feature meets a certain minimum level of performance. Section 5.8.3 specifies the necessary performance, including the allowable pinch-force level and procedures for measuring it.

Additionally, ECE R21 includes section 5.8.4 which limits the locations allowed for power window switches and also requires a driver-controlled lock-out switch for any windows for use by rear seat occupants. Other power window requirements are enumerated in sections 5.8.5 through 5.8.7 of ECE R21 to cover overload protection, owner's manual instructions, and alternative approval requirements.

VI. Current Implementation of ARS and Compliance With FMVSS No. 118 in the United States

Currently, in certifying compliance with FMVSS No. 118, manufacturers have the option to certify that their vehicles comply with the requirements of paragraph S4 or S5. Although a variety of current vehicles are equipped with automatic reversal capability on one or more of their windows, we are not aware of any systems that are certified as complying with paragraph S5 of FMVSS No. 118. Instead, all current vehicles are certified to paragraph S4, even if they are equipped with ARS.

a. Differences in FMVSS and ECE Performance Specifications

Like FMVSS No. 118, ECE R21 permits design flexibility in terms of power windows if ARS is installed. Both ECE R21 and FMVSS No. 118 allow power windows to be safeguarded by means other than auto-reversal capability—mainly by ignition key removal and related strictures. However, the ECE specification for ARS is slightly different from the specification contained in paragraph S5 of FMVSS No. 118. This section describes the similarities between the two standards, as well as crucial differences in stopping speed and testing procedures.

To begin, ECE R21 Section 5.8.2 is analogous to FMVSS No. 118 section S4 in that it enumerates the specific conditions under which window closure is allowable. Like the FMVSS, the ECE regulation makes ignition key insertion in the vehicle's ignition the primary restriction on power window operation. Other allowable conditions listed in ECE section 5.8.2 correspond closely with those listed in section S4 of FMVSS No. 118. For example, both standards specify that windows may be closed by remote control with a range of no greater than 6 meters, or 11 meters for remote controls requiring direct line-of-sight, and both standards allow the windows to operate after ignition key removal up until the time either of the vehicle's front doors is opened to allow egress of the driver.

With respect to ARS requirements, the U.S. and European standards are also highly similar. Like FMVSS No. 118, ECE R21 does not mandate the use of ARS. Instead, it allows power windows to close under conditions other than the listed ones, i.e., without any ignition key restrictions, as long as the windows are ARS-equipped and the automatic reversal functions according to a certain level of performance. The automatic reversal compliance option appears in section 5.8.3 of ECE R21 along with the performance characteristics for that reversal capability. ECE R21 section 5.8.3 and FMVSS No. 118 section S5 are analogous in this respect. Both standards require that ARSs be tested by using rigid test rods that are placed within window openings while the power windows are closed on them. The rods can be any size within a prescribed range to simulate the various body parts of occupants which are most likely to be entrapped by power windows. The range is from a minimum of 4 mm (0.16 inches), equivalent to a small child's finger, to a maximum of 200 mm (about eight inches), equivalent to the greatest width of the head of a 95th percentile adult male.

Both standards set a limit of 100 Newtons of pinch force over the entire range of window openings from 4 mm to 200 mm, and they both specify three alternative positions to which the window must open after reversal. However, there are two key differences between the two standards, both of which arise with respect to the procedure for measuring ARS pinch force.

First, while both standards stipulate the use of cylindrical test rods ranging from 4 mm to 200 mm in diameter to evaluate ARS performance, ECE R21 specifies that the test rods used must have a stiffness, *i.e.,* force-deflection ratio, of 10 Newtons per millimeter (N/mm) for any size test rod in the range, which equates to a 10 mm maximum compression at the maximum allowed 100 Newton force. This contrasts with the requirements in FMVSS No. 118, where a rod stiffness of 20 N/mm (allowing up to 5 mm compression) is specified for larger test rods (between 25 mm and 200 mm diameter) to represent

[15] Overhead switches are exempted, as are switches for S5-compliant windows, although these switches are not exempted from the ''pull-to-close'' requirements.

larger body parts like arms or heads, and 65 N/mm (allowing a mere 1.5 mm of compression) for smaller test rods (25 mm diameter or less), the latter used to simulate fingers.

Inclusion of these stiffness specifications is essential because it is impossible for a power window that is in motion to instantaneously stop and reverse itself. Instead, a window must have some finite time interval and distance of travel over which it decelerates to a stop and then begins to accelerate in the reverse direction. Minimizing this reaction time is a fundamental challenge in the design of an ARS, especially given that there are many other important design factors to be considered.

The different test rod specification means that an S5-compliant ARS must be designed to stop and reverse a closing window more quickly than an ECE R21-compliant ARS. Under S5, a closing window must decelerate and stop over a distance of no more than 1.5 mm, corresponding to 0.015 seconds of reaction time at a typical closing speed of 100 mm/sec, after contacting a test rod before reversal is initiated; for obstructions larger than 25 mm, as much as 5 mm of window movement, corresponding to 0.05 seconds, could occur before reversal. Under ECE R21, a window could continue closing by as much as 10 mm after initial contact with a test rod, equating to a reaction time of 0.1 seconds before reversal is triggered.

The significance of this difference is that small parts of the body like fingers could be less protected under ECE R21 than they are under FMVSS No. 118, and even larger body parts would be subject to as much as twice the compression under the ECE standard before reversal is triggered. This is especially relevant with regard to finger injuries. If a small finger is caught between the window and the frame, a window traveling an additional 10 mm (between initial contact and the time when it stops) before reversing could still do substantial damage to the finger, yet a larger body part, such as an arm, is likely to suffer far less damage from being momentarily compressed the same 10 mm distance.

However, the actual design of an ARS is such that this difference in required reversal sensitivity between the U.S. and European standards may not be important in all instances. For one thing, the analysis above assumes that an ECE R21-compliant ARS performs exactly at the limits of the specification, whereas an actual ARS is likely to outperform those limits. Furthermore, either type of system would be effective in preventing the most catastrophic events, *i.e.,* strangulation or amputation of limbs which, from a safety standpoint, are the types of incidents which are of the greatest importance.

Because there have been no certified S5-compliant ARSs in the vehicle fleet, there are no data to compare its effectiveness to that of ECE R21-compliant systems. To the best of our knowledge, there has never been a significant injury caused by any of the many ARS-equipped power windows that have been in service in a variety of U.S. vehicles over many model years. This is true even though existing automatic reversal systems, while mostly ECE R21-compliant, include systems that do not even necessarily meet ECE R21. This fact attests to the relative effectiveness of ARS in general, at least with regard to severe injuries and fatalities, regardless of the exact specifications in terms of force deflection and reversal speed, that it may meet.

A second key difference between U.S. and European ARS test procedures relates to the orientation of test rods when they are placed in window openings. Unlike FMVSS No. 118, ECE R21 indicates that rods must remain perpendicular to the window during testing. This distinction can, under certain circumstances, make ECE R21 easier to meet from a design standpoint. However, this is very much dependent on particulars of the window design such as the shape of the mating surface of the frame where the window glass seats upon closure and the contour and density of weather stripping. These factors can vary substantially from one vehicle model to another.

A third, less significant, difference between the U.S. and European standards involves the positions that a window must open to after an automatic reversal takes place. ECE R21 and FMVSS No. 118 both specify three possible opening positions, and two of those are identical in both standards. However, for the third optional opening position, ECE R21 specifies that the window be ''at least 50 mm more open than the position when reversal was initiated.'' The corresponding option in FMVSS No. 118 specifies a position of at least ''125 mm more open than when reversal was initiated.'' The consequence of this difference is that, for an ECE R21-compliant ARS designed to meet this option, a window which has reversed automatically upon contact with a person's neck would re-open sufficiently to relieve all pinching force on the person but not necessarily far enough to allow the person to completely extract his head from the window opening. Under the corresponding FMVSS No. 118 specification, a person would have plenty of clearance to easily extract his or her head from the window opening after window reversal.

b. Implementation of ARS in the U.S. and Other Countries

As stated above, NHTSA is not aware of any vehicles that are certified to comply with the requirements of paragraph S5 of FMVSS No. 118. Instead, discussions with vehicle manufacturers and ARS suppliers appear to indicate that most if not all current automatic reversal systems installed in power windows in the U.S. (usually, in conjunction with an express-up feature) meet the European reversal test procedural requirements contained within ECE R21. Further it is noted that we are unaware of any manufacturers that utilize any technologies for ARS other than physical contact systems, although we are aware of some proximity detection systems, such as those based on capacitive or infrared technologies that may be used in the future.

Based on NHTSA's sampling of a MY 2010 fleet with an estimated 13 million passenger cars and light trucks, ECE-compliant ARS already exists in approximately 39 percent of the total population of power windows; that is, approximately 19.2 million of the 49.0 million power windows in vehicles produced annually (not counting roof panels, or power vent windows), are equipped with an ARS. Another 4.9 million windows have ARS that are not claimed to be ECE-compliant. In all of these cases, the ARS is installed as a supplemental safety system for a design that complies with the requirements of paragraph S4 of FMVSS No. 118. The distribution of ARS windows by seating position are 9.1 million driver's side front windows, 6.2 million passenger side front windows, and 8.8 million rear windows. Almost all of these windows are equipped with express-up systems, for which ARS acts as a supplemental safety system. NHTSA is aware of several estimates for the number of makes and models equipped with ARS in Europe and Japan. Since around 2000, the estimates purported have hovered around 80 percent. However, during the development of this NPRM, NHTSA was not able to confirm these estimates.

VII. Expanding ARS to Various Subsets of Windows

In accordance with the mandate in the K.T. Safety Act of 2007, NHTSA has closely re-examined the issue of fatalities and injuries related to the

operation of power windows. We have tentatively determined two things. First, if we require that ARS should be mandated on windows, we believe that the ARSs should conform to the force specifications laid out in ECE R21, rather than those in S5 of FMVSS No. 118 (we note, of course, that this would not preclude the ARSs from complying with both specifications), as our primary goal is to prevent serious injuries resulting from window entrapment. Additionally, we have examined the feasibility of requiring ARS on a variety of power windows. Because the costs and benefits of equipping each window group with an ARS system appear to be different, we have broken down our analysis by window category. We have divided the vehicle windows into three different categories, based on the estimated cost of adding an ARS to those windows, and the types of injuries that can reasonably be anticipated to be prevented by installing ARS in them. These categories are: (1) Windows equipped with the ''express-up'' feature; (2) the four main windows; (3) sunroofs or moonroofs (we use these terms interchangeably) and power vent windows and other panels (such as power rear windows on pickup trucks or SUVs).

a. Windows Equipped With ''Express-Up''

As discussed previously in this notice, one-touch closing of power windows, also called ''express-up,'' is a convenience feature that has become commonplace in modern vehicles. This feature allows a user to close a window by momentarily actuating the window switch. Whereas a conventional window will stop moving unless pressure is applied to the switch, an express-up window continues to fully close after the switch is released. At this time, the agency knows of no injuries associated with these sorts of windows in the U.S.

Most often, only the driver's window in a vehicle has this feature. Logically, the driver's window is the one most often operated, and it would appear that manufacturers recognize that this frequent operation, for example at toll booths or restaurant ''drive through windows,'' is made more convenient by one-touch operation capability. What might be deemed ''express down'' capability, *i.e.,* one-touch *opening* of a window, is typically also present on windows equipped with an express-up feature (and many without it), but there are no safety ramifications of express down, so it is not included in this discussion.

There are also a number of vehicle models that have express-up on the front outboard (front passenger's) window as well as the driver's. Less common, but still well represented,[16] are vehicles with express-up capability on all of their main windows, *i.e.,* all four outboard windows including those in the rear of four-door vehicles.

It is also common for power sunroofs to have express-close capability. Conversely, we are not aware of any power vent windows that currently have this feature. However, due to the nature and infrequency of incidents involving these types of windows, they are discussed separately, below.

To the best of our knowledge, in all vehicles sold to date in the U.S., each power window equipped with an express-up feature also is voluntarily equipped with automatic reversal capability. These ARSs typically comply with the ECE R21 performance specification, instead of the performance specification in FMVSS No. 118, paragraph S5. However, because every U.S. vehicle is certified as compliant with section S4 of FMVSS No. 118 (which safeguards window operation by necessitating the use or presence of the vehicle ignition key), they do not certify to any ARS specifications, including those of ECE R21 or section S5 of FMVSS No. 118.

In summary, in the current fleet of U.S. vehicles, automatic reversal systems are installed voluntarily on windows with express-up capability. Furthermore, since the ARS are not relied upon for certification, their performance does not have to meet any safety standard. However, because suppliers generally design one type of system for use in multiple vehicles sold in markets around the world, most vehicles with ARS have one that is ECE-compliant, despite there being no requirement in the U.S. that this be so.

The likelihood that many vehicles in the U.S. are equipped with the less stringent ECE-compliant ARS, as opposed to the more stringent requirements of FMVSS No. 118, affords this agency an opportunity to discuss the safety differences between the two specifications. As stated above, FMVSS No. 118's specification in paragraph S5 is a more difficult design to conform to than ECE R21, mainly because of the orientation of the test rods and the resultant force on the object. Nonetheless, despite this difference in design specifications, NHTSA has found no evidence that express-up windows, which we believe are uniformly protected by an ECE-compliant ARS, have caused significant numbers of injuries. This raises the issue of what the specific safety benefits and rationales are for the two different specifications, which is discussed below.

The practical difference in terms of safety is that, in our opinion, the requirement of FMVSS No. 118 will protect ''pinching'' injuries to children's fingers, whereas the ECE specification may allow some of those finger injuries to occur. Both specifications, however, will protect against the more severe entrapment or compression injuries, such as can occur when a child's body or neck becomes entrapped in a power window, because that part of the body is able to withstand substantially more compression than a finger can before severe damage is done, assuming the window retracts in time to prevent an injury resulting from an obstructed airway or blood vessel.

b. Main Windows Not Equipped With Express-Up

We believe from our analysis of power window injuries that outboard main windows (in this rulemaking, we refer to generally as ''side'' windows), which means those in the front doors of virtually all passenger cars and light trucks and the rear doors of four-door versions of those vehicles, account for almost all of those injuries. This is not a surprising result since side windows, being by far the most numerous, account for the vast majority of occupant exposure to power window operation. Furthermore, as would be expected, most of the harm associated with side windows comes in the form of pinching of hands, fingers, wrists and forearms, which reflects the proximity and disposition of occupants' bodies to side windows.

Among side windows, we surmise from the data that *front* side windows appear to be most often involved in injuries. Again, this is predictable based solely on exposure—the front seats being the most frequently occupied in a vehicle. Unfortunately, the data are not codified in a way that allows us to consistently determine which side window (*i.e.,* front or rear) in a vehicle was responsible for an injury, and the associated narratives are inconsistent in providing that information. From the narratives, however, we can see that a typical scenario is a driver using the central power window controls located by the driver's seat unintentionally closing the passenger side window on the hand or arm of an occupant in that seating position. Despite the probable higher frequency of this scenario for

[16] According to NHTSA compliance data received from vehicle manufacturers, approximately 31 percent of the fleet have all main windows with an express-up feature.

front passengers, the risk is essentially the same for rear seat passengers, since front and rear windows operate identically. The only significant difference for rear windows is that they are further outside of the driver's field-of-view than front windows, and so it is possible that the driver may be less likely to curtail window closing in time to avoid or mitigate an entrapment.

c. Sunroofs and Power Vent Windows

Injuries from vent-type windows are not discernible in our data, which is expected since exposure should be comparatively very low. Vent windows are usually located at the far rear sides of a vehicle, and occupants are not often seated adjacent to them. In addition, vent windows create openings too small to accommodate larger appendages, particularly occupants' heads.

Incidents involving sunroofs are easier to pick out in the data, but are still uncommon. Again, exposure would be the most prominent reason. Harm from sunroofs is undeniably lower than from windows since the proportion of vehicles equipped with sunroofs is a fraction of the total power-window-equipped vehicle population. In a given vehicle, there is only one sunroof (exceptions do exist for vehicles having multiple sunroofs) as opposed to from two to upwards of six operable windows in a given vehicle. Additionally, occupants, especially young children, are far less prone to place their bodies or limbs out of sunroofs than they are for side windows.

d. Lockout Switch and Override Function Considerations

The agency has considered whether proposing requirements for ARS override and lockout switches, two components that are closely related to the performance of power windows, is justified based on the information we have. Lockout switches are common features on many vehicles, which allow a driver to control whether the passengers can operate their windows. Many vehicles have lockout switches that can prevent all non-driving occupants from operating the windows, or at least the rear windows. Lockout switches can also serve a safety purpose. For example, it is our understanding that one design consideration for these switches is to prevent children from opening a window. However, when the windows are locked out, injuries from inadvertent actuation and obstructed closings caused by the occupant's deliberate actions are also prevented.

Under ECE R21, vehicles that are not equipped with ARS are required to have lockout switches that can be used to deactivate the rear window switches. Furthermore, virtually all vehicles sold with power windows already have a lockout switch installed and as such, there would be little benefit in requiring them. Given these facts, after careful consideration, the agency has decided not to propose requirements for lockout switches at this time, since we are unable to determine that there would be any safety benefits at all from such a rule.

Override functions are generally provided as convenience features in windows with ARS. These allow a user to close the window in situations where an ARS either falsely detects an obstruction or the user does not want the ARS to stop at the obstruction. An example of the former is when the window motor encounters resistance caused by ice or cold weather causing the window liner to contract, which could have the effect of triggering the ARS. Alternatively, a user may wish the window to close on an object as a way to have the window hold that item in place.

We are aware that override strategies for ARSs do not work in a standardized way across all vehicles. While some overrides require that a user release and then quickly reactivate the window switch, others do not. Instead, they may allow continuous activation of the window switch to engage the override, even if the operator is not aware that there may be an ongoing entrapment situation. However, we are not aware of any studies or analysis to support one design iteration over another. Therefore, after careful consideration, the agency has decided not to propose requirements for override capabilities at this time, since we are unable to determine the benefits of doing so.

VIII. Proposal To Mandate That Main Windows With Express-Up Be Equipped With ARS

Given the available estimates of the effectiveness of ARS, the scope of the safety problem that ARS effectively addresses, and the Congressional mandate, NHTSA is proposing in this document to require that all main windows (that is, all windows except vent windows and sunroofs/moonroofs) equipped with an express-up feature, and certified to comply with the requirements of S4 be required to have an ARS that complies with the test specifications of section 5.8.3 of ECE R21. We are not including a broader requirement as part of our primary proposal, given the scope of the remaining safety problem that could be addressed by ARS after factoring in the benefits attributable to the two prior safer switches rulemakings.

Instead of requiring the most expensive safety equipment for all situations, NHTSA has tentatively decided to adjust for three different levels of risk. These levels, in descending order, are: (1) The risk posed by power windows when they close in an environment entirely unattended by an adult operator; (2) the risk posed by power windows when they close in the presence of the operator, but without his or her active control; and (3) the risk posed by power windows when they close while the operator is actively controlling the window switch. We have tentatively determined that these three situations warrant different safety measurements.

For the first situation, where power windows operate in an unattended environment, the highest level of safety may be necessary. Unlike situations where a driver or adult occupant is likely to be present (and the key is in the ignition), unattended closing power windows can pose a serious risk to the safety of children. NHTSA's requirements in FMVSS No. 118, paragraph S5 are designed such that windows will only compress a test rod about 1.5 mm before reversing, which requires an extremely fast reaction time on the automatic-reversing mechanism. The agency established these stringent requirements specifically in order to protect the fingers of children.

We have stated that incidents where the windows raise unexpectedly, as would be the case when the windows raise without any occupant activation, present particularly high dangers of window entrapment. The agency would expect that a larger proportion of these closings would result in a potential injury, and that therefore, the highest degree of protection is required. While we have requested comment regarding the possibility of adopting the ECE R21 force requirements for ARS, without additional data we did not specifically include it in the proposed regulatory text. However, it is under consideration and may be included in a final rule.

With regard to situations where the windows are closing in the presence of the vehicle operator, but without his or her personal manipulation of the switch (*i.e.,* windows with express-up), NHTSA believes that there is justification for proposing to increase the protection surrounding windows with express-up that currently are certified to conform to the requirements in paragraph S4. Unlike all other windows that conform to the key requirements of paragraph S4, windows with express-up do not require continued action by the window

operator or driver in order to close them. This means that if the closing path is obstructed, the operator's hand is likely to not be on the switch at the time of entrapment. This creates a crucial delay between the time when the obstruction is detected and the time that the operator can manually stop the motion of the window (in a normally-activated power window, all the operator needs to do is to remove his/her finger from the window switch).

We are also aware of the relatively limited circumstances in which a person could be injured by a window equipped with express-up. Unlike windows that close automatically without driver supervision (and as such, are required to have ARS subject to the paragraph S5 requirements), express-up windows will always be operated with some degree of supervision, because the key must be in the ''Accessory,'' ''On,'' or ''Start'' position. While this does not ensure that an unsupervised child will not be left alone with such a window active, the supervision requirement does significantly, in the agency's opinion, lessen the risk.

Nonetheless, by virtue of the fact that these windows can close without the operator of the window physically maintaining contact with the switch after initial activation, we tentatively believe that there is an increased risk of injury if ARS were not present. To begin, while safer switches will prevent inadvertent actuation of a window switch by a child's knee or foot, there is still the possibility that a playing child will manipulate the switches by hand and activate the power window, which could lead to entrapment if the child's head or neck is in the path of the closing window. With regard to windows without an express-up feature, this is generally not a problem. As the window rises, it is likely that the child would reflexively move his/her hand from the switch, thereby stopping operation of the window. For some children, given their small stature, it is doubtful that they could even continue to reach the switch with their hand if their neck were entrapped in a window raised nearly to the top of its travel path.[17]

The third situation, where the main windows close while the operator is actively using the switch, is one where NHTSA does not, at this time, believe that the danger warrants the requirement of ARS. If the closing path is obstructed, then the window operator should be able to quickly remove his/her hand from the switch, thereby preventing further injury. As shown above in section IV, due to the relatively low number of severe injuries and fatalities that result from the operation of power windows (excluding those incidents that would have been prevented by the safer switch requirements), we tentatively believe that they remain safe.

While the scenarios involving severe injuries or fatalities for power windows equipped with safer switches are extremely rare, we have found one case where such incidence did occur. In this documented case, it appears that the driver operated the driver's window controls to close a rear-seat window, while not realizing that a child was entrapped in the window being closed. The window that entrapped the child was not equipped with an express-up feature. Because the child was not activating the switch, these incidents could not have been prevented by safer switches or by a lockout feature.[18] ARS, however, may have prevented these injuries. Given the available information about ARS, described above, we believe it would be nearly 100 percent effective in preventing serious injuries such as these.

While an ARS requirement for all main windows would prevent some injuries to fingers and hands, we are not including such a requirement as part of our primary proposal given the scope of the remaining safety problem that could be addressed by ARS after factoring in the benefits attributable to the two prior safer switches rulemakings.

The purpose of the K.T. Safety Act of 2007 is to prevent deaths and serious injuries to children, so we have focused our safety analysis on the severe injuries and fatalities that have occurred due to power window entrapment, rather than the more commonplace, but less severe, injuries involving bruised and pinched fingers that occur to adults and children alike.

NHTSA also conducted an analysis of requiring ARS at all main window positions. The estimates, described at length in NHTSA's Preliminary Regulatory Evaluation, show that the injuries prevented by ARS in all main window positions consist primarily of low-level injuries to fingers and hands, and there would be substantial costs to install ARS in tens of millions of windows.

Therefore, we are not including in our primary proposal a requirement that windows that conform to the current requirements of paragraph S4 and do not have the express-up feature, which currently constitute a majority of all windows, should be required to have ARS as standard equipment. Instead, we believe that the S4 ignition key requirement remains the most effective means to prevent unattended children from suffering power window related injuries in vehicles. We believe that careful child supervision by adults is a crucial factor in preventing a variety of vehicle-related injuries to children, whether related to power windows or any other attendant dangers, such as incidents of hyperthermia and vehicle rollaways (addressed in other portions of the K.T. Safety Act of 2007), which can result when children are left unsupervised in a vehicle. We believe that these factors along with safer window switches together should eliminate virtually all serious injuries and fatalities associated with power windows. However, we request comments as to whether there is additional information that could lead us to require ARS on a broader group of power windows.

Costs and Benefits

Overall, we do not believe that our primary proposal would impose significant costs. To our knowledge, virtually every power window that is equipped with an express-up feature is also equipped with an ARS. Furthermore, we believe that most of these windows are built in accordance with the specifications in ECE R21. Therefore, this proposal would only require manufacturers to take the precautions with express-up windows that, as far as the agency is aware, they have already been taking in most cases.

Furthermore, we tentatively believe that this proposal will promote the development of ECE-compliant ARS for those manufacturers who are currently producing ARS that does not adhere to this specification (or the specifications currently in FMVSS No. 118). Given these facts, we do not believe that this proposal would impose any significant costs on vehicle manufacturers or ARS suppliers.

The agency is placing in the Docket a Preliminary Regulation Evaluation (PRE) that analyzes costs and benefits. That document can be summarized as follows:

The PRE analyzes the cost, benefits, and cost-effectiveness of installing automatic reversal systems in the vehicle windows. While the agency considers the benefits of installing

[17] For example, the distance of a typical 3 year old child's tip of their longest finger to the center of shoulder is 369 mm, with an additional 68 mm distance to the midpoint of the neck, which is not enough to reach most switches with one's neck entrapped in the window, even if the arm was fully extended.

[18] We note, however, that these incidents would have been prevented had the child been properly restrained in a child safety seat.

reversal systems in all types of vehicle windows, including front and rear main windows, sunroofs, as well as small ''vent'' windows, NHTSA proposes requiring automatic reversal systems (ARS)[19] in those windows equipped with ''one-touch closing'' or ''express-up'' operation, in which a window closes without continuous actuation from the window operator. As discussed above, we are also seeking comments on a broader requirement for automatic reversal systems, and could include such a requirement in a final rule.

Five alternatives are analyzed by the PRE. The primary proposal would require ARS for windows with the express-up operation. This analysis assumes that this alternative has no costs or benefits, because, as far as we know, the difference in costs and benefits between power windows with the express-up operation that meet the United Nations Economic Commission for Europe Regulation 21 (ECE R21) requirements and that have ARS already and that don't quite meet ECE R21 is minimal. Comments are requested on costs of improving those systems that don't comply to meet the requirements of ECE R21. The second alternative considers requiring ARS that meets the ECE Regulation 21 requirements for all power side windows. The PRE also analyzed a third alternative: the costs and benefits of requiring power windows to meet the requirements of S5 of FMVSS 118. A fourth alternative, requiring that power windows with express-up be equipped with S5-compliant ARS, is included for comparative purposes. Similarly, a fifth alternative, which is to require ECE-compliant ARS at rear side windows only, was analyzed, considering that most children sit in rear seats. The agency did not analyze an alternative to require ARS for all power windows, sun roofs, etc., since we could find very few cases of injuries involving sun roofs or moon roofs, or power vent windows.

The following table shows the estimated costs, benefits, and cost per equivalent life saved for the five alternatives.

	Cost per window (2007 economics)	Total incremental cost	Annual fatality benefits	Annual injury benefits	Cost per equivalent life saved**
Alternative 1 Requiring ARS at express-up windows to meet ECE 21.	Near $0	Near $0	0	Near 0[20]	N/A.
Alternative 2 Requiring ARS at all power side windows to meet ECE 21.	$6	$149.4 million	2	850	$18.0–$22.6 million.
Alternative 3 Requiring all power side windows to meet S5 of FMVSS No. 118.	$12	$588.1 million	2	997	$63.7–$80.0 million.
Alternative 4 Requiring ARS at express-up windows to meet S5 of FMVSS No. 118.	$6	$144.6 million	0	40	$438.3–550.3 million.
Alternative 5 Requiring ARS at all rear power side windows to meet ECE 21.	$6	$91.8 million	2	unknown	N/A.

** **Note:** The range in cost per equivalent life saved is from a 3% discount rate to a 7% discount rate.

a. Listing of Vehicles Having Power Windows With or Without ARS

One additional aspect of the K.T. Safety Act of 2007 requires that NHTSA make information available to the public regarding the availability of power window ARS on new vehicles. Specifically, section 2 of the Act states, in part, that the secretary shall:

> Publish and otherwise make available to the public through the Internet and other means (such as the 'Buying a Safer Car' brochure) information regarding which vehicles are or are not equipped with power windows and panels that automatically reverse direction when an obstruction is detected.

While we have not reached any conclusions regarding whether and how to mandate ARS in passenger vehicles, we do believe that there is value in informing consumers on which vehicles are already equipped with this safety feature. For that reason, we are providing this information as early as possible.

Furthermore, in order to provide the most relevant information regarding the existence of power windows, we are not limiting the information to only those windows that conform to the specifications currently in FMVSS No. 118. Instead, we will provide information about ARS installed in any window position, which comply with either the current FMVSS No. 118 specifications or the alternative specifications given in ECE R21. We expect to report this information on a vehicle make and model basis at the *http://www.safercar.gov* Web site by October 2009.

b. Proposed Effective Date

The K. T. Safety Act of 2007 specified that full compliance with the safety standards specified in this regulation shall be required not later than 48 months after the date on which the final rule is issued. In accordance with this requirement, NHTSA is proposing a period of 24 months of lead time for this requirement to take effect, due to the fact that nearly all manufacturers would already comply with the proposed requirement. Based on information submitted by the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers, ECE-compliant ARS already exists in approximately 30 percent of the total population of power windows. The agency found that approximately 24.1 million of the 49.0 million power windows in light vehicles produced annually (not counting roof panels, or power vent windows), are equipped with the express-up feature and an ARS. Furthermore, fleet compliance information submitted to NHTSA by vehicle manufacturers indicates that 19.2 million of the 24.1 million vehicle windows having the express-up feature

[19] The proposed ARS requirements are from ECE Regulation 21.

[20] There are some vehicles that have ARS for express up windows, but do not meet the ECE Regulation 21 requirements. The costs and benefits of bringing these vehicles into compliance with ECE Regulation 21 are believed to be small. If, for example, these manufacturers that do not meet the ECE Regulation 21 achieved 88 percent effectiveness, instead of 90 percent effectiveness assumed for those manufacturers that do meet ECE Regulation 21, then having these vehicles comply with ECE Regulation 21 would result in an estimated annual benefit of 4 AIS–1 injuries.

and an ARS meet the ECE ARS requirements. Given this existing level of penetration into the fleet, NHTSA believes that relatively little time would be needed to certify compliance. Thus, NHTSA proposes that the amendments outlined here be effective 24 months after publication of the final rule in the Federal Register, which we believe will provide an adequate period to certify compliance, or make design changes if necessary.

As indicated earlier, the K.T. Safety Act contemplated a phase-in of requirements for ARS. We believe that such a phase-in would be relevant to a rule that required the addition of ARS to a large number of vehicles. Since, for our primary proposal, we believe nearly all manufacturers already meet the proposed requirements, we believe that two years would provide ample lead time to minimize any burdens of compliance.

IX. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Comments may be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dms.dot.gov.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

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 check the Docket for new material.

X. Regulatory Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one 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 agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866 The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is ''significant'' under them.

This document proposes to amend Federal Motor Vehicle Safety Standard No. 118 to require that ''express-up'' or ''one-touch closing'' windows be equipped with ARS. We are placing in the Docket a Preliminary Regulatory Evaluation which analyzes the costs and benefits of this rulemaking. The costs and benefits are summarized in section VIIIa of this preamble, *supra.* The costs and benefits for our primary proposal are expected to be very small because all power windows with express-up operation are believed to have ARS already.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by

the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. This proposed rule would impose few if any additional cost burdens on vehicle manufacturers. Furthermore, we do not anticipate that the proposed rule would result in significant expenditures by ARS suppliers, as most already manufacture ARS in accordance with the specifications given in this proposal. We also do not anticipate that the proposed rule would result in expenditures by small governmental jurisdictions or other small organizations. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposal does not have federalism implications because the proposal does 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.''

Further, no consultation is needed to discuss the issue of preemption in connection with today's proposed rule. The issue of preemption can arise in connection with NHTSA rules in at least two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation would be unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: in some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.*, 529 U.S. 861 (2000). However, NHTSA has considered the nature and purpose of today's proposal and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

D. Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, *Executive Order 12988* specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

E. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. The agency is not aware of any applicable voluntary consensus standards that apply to ARS.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposed rule would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

G. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not contain any new reporting requirements or requests for information.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain

language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

XI. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.118 is amended by adding in alphabetical order the following definition to S3, revising S4, and adding S4.1 and S4.2 to read as follows:

§ 571.118 Standard No. 118; Power-operated window, partition, and roof panel systems.

* * * * *

S3. *Definitions.*

* * *

One-touch closing (or ''express-up'') means any power window, partition or roof panel closing operation whereby the window, partition or roof panel continues in motion in the closing direction after release of the switch used to initiate the closure.

* * * * *

S4. *Operating requirements.*

S4.1 Except as provided in S5, power-operated window, partition, or roof panel systems may be closed only in the following circumstances:

(a) When the key that controls activation of the vehicle's engine is in the ''ON'', ''START'', or ''ACCESSORY'' position;

(b) By muscular force unassisted by vehicle supplied power;

(c) Upon continuous activation by a locking system on the exterior of the vehicle;

(d) Upon continuous activation of a remote actuation device, provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel from a distance of more than 6 meters from the vehicle;

(e) During the interval between the time the locking device which controls the activation of the vehicle's engine is turned off and the opening of either of a two-door vehicle's doors or, in the case of a vehicle with more than two doors, the opening of either of its front doors;

(f) If the window, partition, or roof panel is in a static position before starting to close and in that position creates an opening so small that a 4mm diameter semi-rigid cylindrical rod cannot be placed through the opening at any location around its edge in the manner described in S5(b); or

(g) Upon continuous activation of a remote actuation device, provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel if the device and the vehicle are separated by an opaque surface and provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel from a distance of more than 11 meters from the vehicle.

S4.2 During any one-touch closing operation as defined in S3 above, a power window must reverse direction before it exerts a squeezing force of more than 100N within any opening from 4mm to 200mm between the leading edge of the window and the window frame or mating surface, on a cylindrical test rod, maintained in a perpendicular orientation to the window surface, and having a force-deflection ratio of 10 ± 0.5 N/mm. Upon reversal, the window must open to a position that meets at least one of the following criteria:

(a) A position which is at least as open as the initial position before closing commenced;

(b) A position which is at least 50 millimeters more open than the position at the time reversing was initiated;

(c) A position which permits a semi-rigid cylindrical rod of 200 millimeters diameter to be placed through the opening at the same contact points at which the squeezing force was measured.

* * * * *

Issued: August 27, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–21042 Filed 8–28–09; 11:15 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 74, No. 168

Tuesday, September 1, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 27, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: 7 CFR 1744–C, Advance and Disbursement of Funds—Telecommunications.

OMB Control Number: 0572–0023.

Summary of Collection: Section 201 of the Rural Electrification Act (RE Act) of 1936 authorizes the Administrator of the Rural Utilities Service (RUS) to make loans for the purpose of providing telephone service to the widest practicable number of rural subscribers. A borrower requesting loan advances must submit RUS Form 481, ''*Financial Requirement Statement*''. Along with the Form 481 the borrower must also submit a description of the advances and upon request copies of backup documentation relating to the transactions. The information is used to determine what projects the contracts listed on the Form relate to.

Within a reasonable amount of time, funds are advanced to the borrower for the purposes specified in the statement of purposes.

Need and Use of the Information: The Form 481 is used by RUS to record and control transactions in the construction fund. RUS will collect information and verify that the funds advanced are related directly to loan purposes. If the information were not collected, RUS would not have any control over how loan funds are spent or a record of the balance to be advanced.

Description of Respondents: Business or other for-profit.

Number of Respondents: 177.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,223.

Rural Utilities Service

Title: 7 CFR 1717 subpart Y, Settlement of Debt Owed by Electric Borrowers.

OMB Control Number: 0572–0116.

Summary of Collection: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief will be affected by this collection of information. The information collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed.

Need and Use of the Information: RUS will collect information to determine the need for debt settlement; the amount of debt the borrower can repay; the future scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–21115 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of the Fresh Fruit and Vegetable Program (FFVP)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for the Food and Nutrition Service Evaluation of the Fresh Fruit and Vegetable Program (FFVP) to examine how the Fresh Fruit and Vegetable Program is currently being implemented and to estimate program impacts on participating students.

DATES: Written comments must be received on or before November 2, 2009.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Director, Office of Research and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via e-mail to *Steve.Carlson@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: Food and Nutrition Service Evaluation of the Fresh Fruit and Vegetable Program.

OMB Number: Not Yet Assigned.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: The Fresh Fruit and Vegetable Program (FFVP) is intended to fight childhood obesity and improve overall diet quality by teaching children more healthful eating habits. The FFVP began as a pilot project in four states pursuant to provisions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). Schools selected to participate in the FFVP are reimbursed for providing free fresh fruits and vegetables to students during the school day, outside of normal school breakfast and lunch meals. Under section 4304 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), the Richard B. Russell National School Lunch Act (NSLA) was amended to authorize the expansion of the FFVP to selected schools nationwide, including Guam, Puerto Rico, and the Virgin Islands. This was accomplished by incorporating the FFVP into its own section in the NSLA, section 19, 42 U.S.C. 1770. As part of this authorizing legislation, the Secretary of Agriculture was tasked in section 19(h) with conducting an evaluation of the FFVP. The legislation states:

''(1) In General.—The Secretary shall conduct an evaluation of the program, including a determination as to whether children experienced, as a result of participating in the program—

(A) Increased consumption of fruits and vegetables;

(B) other dietary changes, such as decreased consumption of less nutritious foods; and

(C) such other outcomes as are considered appropriate by the Secretary.''

The evaluation of the FFVP has two main objectives: (1) To examine how the FFVP is currently being implemented, and (2) to estimate program impacts on participating students. To address these objectives, FNS has specified 36 research questions that are grouped into six broad research categories for the evaluation:

1. Description of participating schools.
2. Description of participating children.
3. Description of FFVP implementation.
4. Examine impacts of FFVP on school environment.
5. Examine program impacts on children including consumption of fresh fruits and vegetables, consumption of other foods, nutritional status and attitudes towards fresh fruits and vegetables.
6. Examine contextual effects of nutrition education and delivery systems on FFVP.

To evaluate program impacts on participating students, data will be collected from 6,144 students in grades 4–6 in 256 public elementary schools in 16 states as well as parents, teachers, school food service managers and principals. Half (128) of the sampled schools will participate in the FFVP and the other half (128) will be non-FFVP participating schools. To examine the implementation of the FFVP, data will be collected from an additional 448 schools that participate in the FFVP to provide a random sample of all schools participating in the program. Implementation data will also be collected from the 128 participating schools in the impact study, thus totaling 576 schools for the implementation study.

Affected Public: State, Local and Tribal, Individuals and Households—Respondent groups identified include: (1) State Child Nutrition (CN) Directors; (2) Directors of School Food Authorities (SFAs); (3) School Principals; (4) School food service managers; (5) Teachers; (6) Students (grades 4, 5 and 6); and (7) Parents of sampled students.

Estimated Number of Respondents: The total estimated number of respondents is 18,854. This includes: 7,680 students (80% will complete interview; subsample will complete a second 24-hour dietary recall); 7,680 parents (80% will complete brief questionnaire); 768 teachers (90 percent will complete brief questionnaire); 256 school food service managers (95 percent will complete brief interview); 816 school principals (86 percent will complete Web survey); 816 SFA directors (86 percent will complete Web survey), and 54 State CN Directors (90 percent will complete Web survey), 16 of whom will provide some additional administrative data for the impact study states.

Estimated Number of Responses per Respondent: Two major types of data collection activities will be used: Web surveys with three respondent groups and in-school data collection with five different respondent groups. State CN Directors or designees will be asked to participate in two Web surveys, and those agencies in the 16 impact study states will provide additional detail on FFVP applications and reimbursements. SFA Directors and Principals will each participate in one Web survey. School food service managers will be interviewed in person two times on sample days for information about foods served in FFVP, and school meals (School Breakfast Program and National School Lunch Program) on those days. Teachers and parents of sampled students will each complete one short questionnaire. Sampled students will all participate in an individual 24-hour dietary recall which may be assisted by a one-day food diary. A subsample of the students will complete a second 24-hour dietary recall on a nonconsecutive day, which may be assisted by a one-day food diary.

Estimated Total Annual Responses: 19,180.

Estimated Time per Response: About 30 minutes (0.48 hours). The estimated time of response varies from 3 to 65

minutes depending on respondent group, as shown in the table below.

Estimated Total Annual Burden on Respondents: 508,668 minutes (8,477.8 hours). See the table below for estimated total annual burden for each type of respondent. The burden estimates assume the use of a one-day food diary completed by sampled students and a second one-day food diary completed by a 10% subsample of students which may be deemed necessary for collecting usual intake of foods and/or nutrients. If the food diaries are not included, the burden estimates would be lower.

Respondent		Estimated number of respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
Students—record-assisted dietary recalls.	Completed	6,144	1.00	6,144.0	1.0833	6655.8
	Attempted	1,536	1.00	1536.0	0.0500	76.8
Students—second dietary recall (10% subsample).	Completed	614	1.00	614.0	0.5833	358.1
	Attempted	154	1.00	154.0	0.0500	7.7
Parents	Completed	6,144	1.00	6,144.0	0.0833	511.8
	Attempted	1,536	1.00	1,536.0	0.0500	76.8
Teachers	Completed	691	1.00	691.0	0.0833	57.6
	Attempted	77	1.00	77.0	0.0500	3.9
School Food Service Managers	Completed	243	2.00	486.0	0.1667	81.0
	Attempted	13	2.00	26.0	0.0500	1.3
School Principals	Completed	704	1.00	704.0	0.3333	234.6
	Attempted	112	1.00	112.0	0.0500	5.6
State CN Directors	Completed	49	2.00	98.0	0.3333	32.7
	Attempted	5	2.00	10.0	0.0500	0.5
State CN Directors (Administrative Data).	Completed	16	2.00	32.0	0.5000	16.0
	Attempted	0	2.00	0.0	0.0500	0.0
School Food Authority (SFA) Directors.	Completed	704	1.00	704.0	0.5000	352.0
	Attempted	112	1.00	112.0	0.0500	5.6
Totals		18,854		19,180.0		8,477.8

Dated: August 25, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–21067 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Nursery and Floriculture Chemical Use Survey. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length. We will also be discontinuing the Nursery and Christmas Tree Production Survey for this approval cycle. NASS will be able to use production data from the Census of Horticulture (0535–0236) to calculate weights and expansions for the chemical use data.

DATES: Comments on this notice must be received by November 2, 2009 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0244, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Nursery and Christmas Tree Production Survey and Nursery and Floriculture Chemical Use Survey.

OMB Control Number: 0535–0244.

Expiration Date of Approval: January 31, 2010.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition, as well as economic statistics, environmental statistics related to agriculture and also to conduct the Census of Agriculture.

This includes estimates of production and value of key nursery products and chemical use by nursery and floriculture production operations.

The Nursery and Floriculture Chemical Use Survey, is conducted every 3 years; it measures chemical usage, related to the production of nursery and floriculture crops in six major producing States. The resulting publication, is part of the NASS series on Agricultural Chemical Usage, and it summarizes rates of application, total amount of active ingredients applied, and use of pest management practices.

NASS collects on-farm chemical use data to enhance the quality of information used in the evaluation of issues related to agricultural chemicals, including pesticide registrations. Pest management data are used to measure integrated pest management adoption levels and evaluate the impact of alternative pesticide regulations, policies, and practices. A sample of nursery and floriculture operations with sales over $10,000 in the major States will be personally interviewed, since chemical use data are not accurately collected by telephone or mail.

A nursery production survey and a Christmas tree production survey are conducted every year in Oregon.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33376.

Estimate of Burden: Based on previous data collected, the average amount of respondent burden for the Nursery and Floriculture Chemical Use Survey is estimated to average 60 minutes per respondent (conducted once every three years). The annual nursery production survey conducted in Oregon is estimated to average 30 minutes per respondent. The annual Christmas tree production survey in Oregon is estimated to average 20 minutes per respondent. With an estimated response rate of approximately 80%, we estimate the total burden to be approximately 4,000 hours.

Respondents: Producers of nursery, greenhouse, and floriculture products.

Estimated Annual Number of Respondents: (Chemical Use Survey at 4,200 × frequency of ⅓) + (Oregon Nursery Production Survey at 800 × frequency of 1.0) + (Oregon Christmas Tree Production at 1,000 × frequency of 1.0) = approximately 3,200.

Estimated Total Annual Burden on Respondents: Approximately 4,000 hours. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, August 11, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9–20925 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0063]

Notice of Request for Extension of Approval of an Information Collection; Importation of Fruit From Thailand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of fruit From Thailand.

DATES: We will consider all comments that we receive on or before November 2, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0063* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0063, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0063.

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: For information on regulations for the importation of fruit from Thailand, contact Mr. Alex Belano, Branch Chief, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–5333. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fruit from Thailand.

OMB Number: 0579–0308.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, APHIS regulates the importation of fruits and vegetables into the United States from certain parts of the world as provided in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–49).

In accordance with these regulations, fruit from Thailand may be imported into the United States only under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection

activities, including a phytosanitary certificate with an additional declaration statement and box labeling.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.121875 hours per response.

Respondents: Importers and the national plant protection organization of Thailand.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 64.

Estimated annual number of responses: 640.

Estimated total annual burden on respondents: 78 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–21098 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0054]

University of Florida; Determination of Nonregulated Status for Papaya Genetically Engineered for Resistance to the Papaya Ringspot Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a papaya line developed by the University of Florida, designated as transformation event X17–2, which has been genetically engineered for resistance to the papaya ringspot virus, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the University of Florida in its petition for a determination of nonregulated status, our analysis of other scientific data, our response to comments received from the public on the petition for nonregulated status for papaya line X17–2, and our associated environmental assessment. This notice also announces the availability of our written determination of nonregulated status and finding of no significant impact.

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

ADDRESSES: You may read the petition, final environmental assessment, determination, finding of no significant impact, comments we received on the petition, and our responses to those comments 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. See the Supplementary Information section of this notice for a link to view these documents on the Internet.

FOR FURTHER INFORMATION CONTACT: Mr. John Cordts, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5531, e-mail: *john.m.cordts@aphis.usda.gov.* To obtain copies of the petition, final environmental assessment, or the finding of no significant impact, contact Ms. Cindy Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.* The petition, final environmental assessment and finding of no significant impact are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_33701p.pdf* and *http://www.aphis.usda.gov/brs/aphisdocs/04_33701p_ea.pdf.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe may be plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On December 2, 2004, APHIS received a petition seeking a determination of nonregulated status (APHIS No. 04–337–01p) from the University of Florida, Institute of Food and Agricultural Sciences, of Homestead, FL, for papaya (*Carica papaya* L.) designated as transformation event X17–2, which has been genetically engineered for resistance to the papaya ringspot virus (PRSV), stating that papaya line X17–2 does not present a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340. UFL–IFAS responded to APHIS' subsequent requests for additional information and clarification and submitted revisions to their petition on January 12, 2007, and June 14, 2007.

Analysis

As described in the petition, papaya transformation event X17–2 has been genetically engineered with a sequence from the PRSV. This sequence was derived from the PRSV coat protein (*cp*) gene and introduced into X17–2 papaya along with one plant-expressed selectable marker gene, *nptII,* via *Agrobacterium*-mediated

transformation. The marker gene is commonly used and enables researchers to select those plant tissues that have been successfully transformed with the gene of interest. The resistance to PRSV appears to be conferred through post transcriptional gene silencing.

Transformation event X17–2 has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. X17–2 papaya has been field tested in the United States since 1999 under notifications acknowledged by the U.S. Department of Agriculture (USDA). In the process of reviewing the notifications for field trials of the subject papaya plants, APHIS determined that the vectors and other elements were disarmed and that trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination. APHIS presented two alternatives in the draft environmental assessment (EA) based on its analyses of data submitted by the University of Florida, a review of other scientific data, as well as data gathered from field tests conducted under APHIS oversight: (1) Take no action (X17–2 papaya remains a regulated article); or (2) deregulate X17–2 papaya in whole (the preferred alternative).

In a notice [1] published in the **Federal Register** on September 2, 2008 (73 FR 51267–51268, Docket No. APHIS–2008–0054), APHIS announced the availability of the University of Florida's petition and on APHIS' associated draft EA for public comment. APHIS solicited comments on whether the subject papaya would present a plant pest risk and on its EA for the deregulation petition. APHIS received over 12,000 comments by the close of the 60-day comment period, which ended on November 3, 2008. There were 18 comments from scientific organizations or individuals that supported deregulation. One individual supported deregulation as long as the taste of organic papayas was not damaged. Approximately 175 unique comments opposed to the deregulation were submitted. The remaining approximately 12,000 comments were form letters opposing deregulation in principle; all of those letters raised essentially identical points and had been compiled by organizations generally opposed to genetic engineering of plants. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact (FONSI).

Determination

Based on APHIS' analysis of field, greenhouse, and laboratory data submitted by the University of Florida, references provided in the petition, additional scientific data, information described in the EA, comments provided by the public, and APHIS' evaluation of those comments, APHIS has determined that X17–2 papaya will not pose a plant pest risk for the following reasons: (1) Disease susceptibility and compositional profiles of X17–2 are similar to other papaya varieties, therefore no direct or indirect effects on raw or processed plant commodities are expected; (2) X17–2 will not hybridize with any native papaya species, although it may hybridize with feral or other *Carica papaya* plants; known mitigation methods to exclude GE pollen are described and lead APHIS to conclude that significant effects on both organic and conventional growers are unlikely; (3) it exhibits no characteristics that would cause it to be more weedy than the non-genetically engineered papaya from which it was developed or other papayas; (4) X17–2 does not exhibit changes in pest or disease susceptibility (other than resistance to PRSV), therefore significant impacts on biodiversity of papaya or other organisms in the environment are unlikely; (5) in assessing viral interaction issues, APHIS considered the potential for recombination, heteroencapsidation and synergy and concluded that the likelihood of development of new viruses or viruses with novel/altered properties is very low; (6) the anti-viral activity of the inserted genes does not pose risks to non-target organisms, including beneficial organisms and threatened and endangered species; (7) compared to current papaya PRSV management practices, cultivation of X17–2 should not significantly impact standard agricultural practices or commercial uses of papaya; (8) multiple years of growing X17–2 papaya has not resulted in observable changes to the environment, therefore APHIS concludes that significant cumulative impacts resulting from granting X17–2 nonregulated status are unlikely to occur.

National Environmental Policy Act

To provide the public with documentation of APHIS' environmental review and analysis of any potential environmental impacts associated with the determination of nonregulated status for X17–2 papaya, an EA was prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, other pertinent scientific data, and its analyses of public comments received on the EA, APHIS has reached a FONSI with regard to the determination that the University of Florida's X17–2 papaya line and lines developed from it should not result in any significant impacts once they are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and FONSI are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of August 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–21092 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, petition, EA, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0054.*

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to T. A. Seeds LLC of Jersey Shore, Pennsylvania, an exclusive license to the soybean variety described in Plant Variety Protection Certificate Number 200300169, ''Moon Cake,'' issued on December 15, 2003.

DATES: Comments must be received on or before October 1, 2009.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology

Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this variety as T. A. Seeds LLC of Jersey Shore, Pennsylvania has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E9–20928 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Dixie National Forest, USDA Forest Service.

ACTION: Notice of proposed new fee.

SUMMARY: The Dixie National Forest is proposing to charge a fee for overnight rental of the Pine Valley Guard Station of $75 in the summer and $40 in the winter. This guard station has not been available for recreation use prior to this date. Rentals of other guard stations on the Dixie National Forest have been very popular, illustrating that people appreciate and enjoy the availability of these historic buildings.

The Pine Valley Guard Station is located at the edge of the Pine Valley Wilderness Area and within the Pine Valley Recreation Area, and will sleep up to six people. The site is located in Washington County, Utah. The guard station will have hot and cold running water in the summer, flush toilet, shower, electricity, refrigerator, and wood stove. Bunks and all cooking and eating utensils will be provided for renters.

Determination of the fee price is based on the level of amenities and services provided, cost of operations and maintenance, market assessment, and public comment. The fee is proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements of this guard station.

DATES: Comments will be accepted through October 15, 2009. New fees would begin May 2010.

ADDRESSES: Pine Valley Ranger District, Attn: Recreation Fee Program, 196 E. Tabernacle, Suite 38, St. George, Utah 84770 or *http://www.fs.fed.us/r4/dixie/contact/feedback.shtml* (include ''Recreation Fee Program'' in the subject line).

FOR FURTHER INFORMATION CONTACT: Gretchen Merrill, Public Service Staff Officer, 435–865–3741. Information about proposed fee changes can also be found on the Intermountain Region Web site: *http://www.fs.fed.us/r4/recreation/rac/index.shtml.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: August 19, 2009.

Robert G. MacWhorter,

Forest Supervisor.

[FR Doc. E9–20853 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Announcement of Value-Added Producer Grant Application Deadlines

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of withdrawal of Solicitation of Applications (NOSA) and republication of Notice of Funds Available (NOFA) Announcement of Value-Added Producer Grant Application Deadlines.

SUMMARY: Rural Development (RD) previously withdrew the May 6, 2009 **Federal Register** notice (74 FR 20900), which was published in error, announcing the availability of approximately $18 million in competitive grants for fiscal year (FY) 2009 to help independent agricultural producers enter into value-added activities. This notice announces the availability of approximately $18 million in competitive grants for fiscal year (FY) 2009 to help independent agricultural producers enter into or expand value-added activities, with the following clarifications and alterations: (1) Highlights the inclusion of Beginning and Socially Disadvantaged farmers and ranchers, as well as operators of Small and Medium-sized farms or ranches that are structured as a Family Farm, and provides more weight in the scoring process, (2) deletes contradictory language related to the eligibility of applicants under the newly allowable mid-tier value chain provision by clarifying that the applicant entity must be eligible under the legislatively-stated categories (but the network they are part of can include virtually any type of organization), (3) establishes the upper limit of ''medium-sized farm'' at between $250,001 and $700,000 in annual gross sales of agricultural product, (4) revises the list of renewable energy technologies that are eligible for funding, (5) clarifies that different documentation standards apply for Planning Grants versus Working Capital Grants, (6) deletes ''Innovation'' as a specific scoring criteria, (7) allows branding, packaging and other means of product differentiation as a *component* of a value added strategy in all product eligibility categories, and (8) provides a 90-day application period.

USDA Rural Development welcomes projects that highlight innovative uses of agricultural products. This may include using existing agricultural products in non-traditional ways and/or merging agricultural products with technology in creative ways. As with all value-added efforts, generating new products, creating expanded marketing opportunities and increasing producer income are the end goal. Applications proposing to develop innovative, sustainable products, businesses, or marketing opportunities that accelerate creation of new economic opportunities and commercialization in the agri-food, agri-science, or agriculture products integrated or merged with other sciences or technologies are invited. This may include alternative uses of agricultural products as well as, value-added processing of agricultural commodities to produce bio-materials (*e.g.* plastics, fiberboard), green chemicals, functional foods (*e.g.* lutin enhanced ''power bar'' snacks, soy enhanced products), nutraceuticals, on-farm renewable energy, and biofuels (*e.g.* ethanol, bio-diesel).

Awards may be made for planning activities or for working capital expenses, but not for both. The

maximum grant amount for a planning grant is $100,000 and the maximum grant amount for a working capital grant is $300,000.

Ten percent of available funds are reserved to fund applications submitted by Beginning Farmers or Ranchers and Socially Disadvantaged Farmers or Ranchers, with working definitions derived from 7 U.S.C. 1991(a) and 2003(e) and provided in section I of this notice. An additional ten percent of available funds are reserved to fund Mid-Tier Value Chain projects, as defined in section I of this notice (both collectively referred to as ''reserved funds'').

DATES: Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper applications for both reserved and unreserved funds must be postmarked and mailed, shipped, or sent overnight no later than November 30, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

Electronic applications for both reserved and unreserved funds must be received by November 30, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

ADDRESSES: Paper applications must be submitted to the Rural Development State Office for the State in which the Project will primarily take place. Addresses may be found at: *http://www.rurdev.usda.gov/recd_map.html*.

Electronic applications must be submitted through the Grants.gov Web site at: *http://www.grants.gov*, following the instructions therein.

FOR FURTHER INFORMATION CONTACT: For assistance, applicants should visit the program Web site at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm*. In addition, applicants should contact their USDA Rural Development State Office by calling 800–670–6553 and pressing ''1,'' or by selecting the Contact Information link at the above Web site.

Applicants are encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process. Applicants may submit drafts of their applications to their State Offices for a preliminary review anytime prior to October 1, 2009. The preliminary review will only assess the eligibility of the application and its completeness. The results of the preliminary review are not binding on the Agency.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: USDA Rural Business Cooperative Services.

Funding Opportunity Title: Value-Added Producer Grants.

Announcement Type: Reissued announcement.

Catalog of Federal Domestic Assistance Number: 10.352.

Dates: Applications for grants must be submitted on paper or electronically according to the following deadlines:

Paper applications for both reserved and unreserved funds must be postmarked and mailed, shipped, or sent overnight no later than November 30, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

Electronic applications for both reserved and unreserved funds must be received by November 30, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

I. Funding Opportunity Description

This solicitation is issued pursuant to section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (*see* 7 U.S.C. 1621 note)) authorizing the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants. The Secretary of Agriculture has delegated the program's administration to USDA Rural Development Cooperative Programs.

The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. Cooperative Programs will competitively award funds for Planning Grants and Working Capital Grants. In order to provide program benefits to as many eligible applicants as possible, applicants must apply only for a Planning Grant or for a Working Capital Grant, but not both. Grants will only be awarded if Projects are determined to be economically viable and sustainable.

USDA Rural Development is encouraging applications from Beginning Farmers or Ranchers, Socially Disadvantaged Farmers or Ranchers, and operators of Small or Medium-Sized Farms and Ranches that are structured as a Family Farm, as defined in this notice. Priority points will be assigned to eligible applicants in those categories. As with all value-added efforts, generating new products, creating expanded marketing opportunities and increasing producer income are the end goal. Please note that businesses of all sizes may apply. In FY 2008, 31 percent of awards were $50,000 or less.

Definitions

The definitions at 7 CFR 4284.3 and 4284.904 are incorporated by reference, with the exception of the definition of Value-Added, which is superseded by the definition of Value-Added Agricultural Product as published in the 2008 Farm Bill and is included below. In addition, the Agency uses the following terms in this NOSA: Agricultural Commodity, Beginning Farmer or Rancher, Business Plan, Conflict of Interest, Family Farm, Feasibility Study, Local and Regional Supply Network, Locally Produced Agricultural Food Product, Marketing Plan, Medium-Sized Farm, Mid-Tier Value Chain, Pro Forma Financial Statements, Project, Small Farm, Socially Disadvantaged Farmer or Rancher, and Venture. It is the Agency's position that those terms are defined as follows.

Agricultural Commodity—An unprocessed product of farms, ranches, nurseries, and forests. Agricultural Commodities include: Livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural Commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

Beginning Farmer or Rancher—An entity in which: (1) All owners have operated a farm or a ranch for not more than 10 years; and (2) all owners materially and substantially participate in the operation of a farm or a ranch; and (3) all owners provide substantial day-to-day labor and management of a farm or a ranch. For VAPG, a Beginning Farmer or Rancher must currently be producing the agricultural commodity to which value will be added.

Business Plan—A formal statement of a set of business goals, the reasons why they are believed attainable, and the

plan for reaching those goals, including three years of pro forma financial statements. It may also contain background information about the organization or team attempting to reach those goals.

Conflict of Interest—A situation in which a person or entity has competing professional or personal interests that make it difficult for the person or business to act impartially. An example of a Conflict of Interest is a grant recipient or an employee of a recipient that conducts or significantly participates in conducting a Feasibility Study for the recipient.

Family Farm—*See* 7 CFR 761.2.

Feasibility Study—An independent, third party analysis that shows how the Venture would operate under a set of assumptions—the technology used (the facilities, equipment, production process, *etc.*), the qualifications of the management team, and the financial aspects (capital needs, volume, cost of goods, wages, *etc.*). The analysis should answer the following questions about the Venture.

(1) Where is it now?

(2) Where do the owners of the Venture want to go?

(3) Why do the owners of the Venture want to go forward with the Venture?

(4) How will the owners of the Venture accomplish the Venture?

(5) What resources are needed?

(6) Who will provide assistance?

(7) When will the Venture be completed?

(8) How much will the Venture cost?

(9) What are the risks?

Local and Regional Supply Network—An interconnected group of food-related entities through which food products move from production through consumption in a local or regional area of the U.S. Examples of food-related entities include, but are not limited to, Agricultural Producers, processors, distributors, wholesalers, retailers, consumers, and any other related organizations, including entities that organize or provide technical assistance for such networks or help to establish new or emerging networks. *Locally Produced Agricultural Food Product*—Any agricultural food product that is raised, produced, and distributed in—

(1) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or

(2) The State in which the product is produced.

Marketing Plan—A plan for the Venture conducted by a qualified consultant that identifies a market window, potential buyers, a description of the distribution system and possible promotional campaigns.

Medium-Sized Farm—A farm or ranch that has averaged between $250,001 and $700,000 in annual gross sales of agricultural products in the previous three years.

Mid-Tier Value Chain—Local and regional supply networks that link independent producers with businesses and cooperatives that market Value-Added Agricultural Products in a manner that—

(1) Targets and strengthens the profitability and competitiveness of small and medium-sized farms and ranches that are structured as a family farm; and

(2) Obtains agreement from an eligible Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture that is engaged in the value chain on a marketing strategy.

(3) For Mid-Tier Value Chain projects the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-added product ownership and transfer arrangements may be necessary. Consequently, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the mid-tier value chain proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

Pro Forma Financial Statements—Financial statements that identify the future financial position of a company. They are part of the Business Plan and include an explanation of all assumptions, such as input prices, finished product prices, and other economic factors used to generate the financial statements. They must include projections in the form of cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for future years. The balance sheet should be annual for all years.

Project—Includes all proposed activities to be funded by the VAPG and Matching Funds.

Small Farm—A farm or ranch that has averaged $250,000 or less in annual gross sales of agricultural products in the previous three years.

Socially Disadvantaged Farmer or Rancher—A farmer or rancher who is a member of a ''socially disadvantaged group.'' In this definition, the term farmer or rancher means a person that is directly engaged in farming or ranching or an entity solely owned by individuals who are directly engaged in farming or ranching. A socially disadvantaged group means a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In the event that there are multiple farmer or rancher owners of the applicant organization, the Agency requires that at least 51 percent of the owners are members of a socially disadvantaged group.

Value-Added Agricultural Product—Any agricultural commodity or product that—

(1)(i) Has undergone a change in physical state;

(ii) Was produced in a manner that enhances the value of the agricultural commodity or product, as demonstrated through a Business Plan that shows the enhanced value, as determined by the Secretary;

(iii) Is physically segregated in a manner that results in the enhancement of the value of the Agricultural Commodity or product;

(iv) Is a source of farm- or ranch-based renewable energy, including E–85 fuel; or

(v) Is aggregated and marketed as a locally-produced agricultural food product; and

(2) As a result of the change in physical state or the manner in which the Agricultural Commodity or product was produced, marketed, or segregated—

(i) The customer base for the agricultural commodity or product is expanded; and

(ii) A greater portion of the revenue derived from the marketing, processing, or physical segregation of the agricultural commodity or product is available to the producer of the commodity or product.

Venture—Includes the Project and any other activities related to the production, processing, and marketing of the Value-Added product that is the subject of the VAPG grant request. Please note that not all Venture-related expenses will be eligible for this program.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2009.

Approximate Total Funding: $18 million.

Approximate Number of Awards: 80.

Approximate Average Award: $140,000.

Floor of Award Range: None.

Ceiling of Award Range: $100,000 for Planning Grants and $300,000 for Working Capital Grants.

Anticipated Award Date: January 7, 2010.

Budget Period Length: Not to exceed 3 years.

Project Period Length: Not to exceed 3 years.

III. Eligibility Information

A. Eligible Applicants

Applicants must be an Independent Producer, Agriculture Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture as defined in 7 CFR part 4284, subpart A. An applicant applying as an Independent Producer must be 100 percent owned by Independent Producers. The owner(s) must currently own and produce more than 50 percent of the Agricultural Commodity that will be used for the Value-Added Agricultural Product, and that product must be owned by the Independent Producer owners from its raw commodity state through the marketing of the final product. Examples of Independent Producers are steering committees, sole proprietorships, LLCs, LLPs, other for-profit corporations, and non-profit corporations.

An applicant applying as an Agriculture Producer Group must have a mission that includes working on behalf of Independent Producers. The majority of its membership and board of directors must meet the definition of an Independent Producer. The applicant must identify the Independent Producers on whose behalf the proposed Project will be completed. Note that this type of applicant may not apply on behalf of its entire membership. The Independent Producers on whose behalf the proposed Project will be completed must currently own and produce more than 50 percent of the Agricultural Commodity that will be used for the Value-Added Agricultural Product, and that product must be owned by the Independent Producer owners from its raw commodity state through the marketing of the final product. Examples of Agricultural Producer Groups are trade or commodity associations.

An applicant applying as a Farmer or Rancher Cooperative must demonstrate that it is a farmer or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners. The cooperative must be in good standing and incorporated as a cooperative in its state of incorporation. The owners must currently own and produce more than 50 percent of the Agricultural Commodity that will be used for the Value-Added Agricultural Product, and that product must be owned by the Independent Producer owners from its raw state through the marketing of the final product.

Farmer or Rancher Cooperatives that are 100 percent owned by farmers and ranchers must apply as Farmer or Rancher Cooperatives. It is the Agency's position that if a cooperative is 100 percent owned and controlled by agricultural harvesters (*e.g.*, fishermen, loggers), it is eligible only as an Independent Producer and not as a Farmer or Rancher Cooperative. If a cooperative is not 100 percent owned and controlled by farmers and ranchers or 100 percent owned and controlled by agricultural harvesters, it may still be eligible to apply as a Majority-Controlled Producer-Based Business Venture, provided it meets the definition in 7 CFR part 4284, subpart A.

An applicant applying as a Majority-Controlled Producer-Based Business Venture must have more than 50 percent of its ownership and control held by Independent Producers; or partnerships, LLCs, LLPs, corporations, or cooperatives that are themselves 100 percent owned and controlled by Independent Producers. The Independent Producer owners must currently own and produce more than 50 percent of the Agricultural Commodity that will be used for the Value-Added Agricultural Product, and that product must be owned by the Independent Producer owners from its raw commodity state through the marketing of the final product. Examples of Majority-Controlled Producer-Based Business Ventures are LLCs, LLPs, and other for-profit corporations. No more than 10 percent of program funds can go to applicants that are Majority-Controlled Producer-Based Business Ventures.

Applicants other than Independent Producers must limit their Projects to Emerging Markets. All applicants must demonstrate an increase in customer base and an increase in revenue returns to the producers.

If the applicant is an unincorporated group (steering committee), it must form a legal entity before the Grant Agreement can be approved by the Agency. A steering committee may only apply as an Independent Producer. Therefore, the steering committee must be 100 percent composed of Independent Producers and the business to be formed must meet the definition of Independent Producer, as defined in 7 CFR 4284, subpart A.

Entities that contract out the production of an Agricultural Commodity are not considered Independent Producers.

Any businesses that are selected for awards must provide documentation that they are in good standing with the state of incorporation.

In addition to the above requirements, applicants may direct that their applications be considered for reserved funds if they provide documentation and discussion to demonstrate that they meet the definition of a Beginning Farmer or Rancher, or a Socially Disadvantaged Farmer or Rancher as defined in Section I of this notice.

In addition to the above requirements, applications may be considered for reserved funds if the applicant provides discussion and documentation to demonstrate that the proposed project meets the definition of a Mid-Tier Value Chain as defined in Section I of this notice. Applicants must be an eligible Independent Producer, Farmer or Rancher Cooperative, Agricultural Producer Group, or Majority Controlled Producer-Based Business Venture and must demonstrate that they propose to develop an interconnected food-related supply network of business enterprises through which food products move from production through consumption in a local and/or regional area in the United States. This supply network must link independent producers with businesses and cooperatives that market Value-Added Agricultural Products in a manner that targets and strengthens the profitability and competitiveness of Small and Medium-Sized Farms and Ranches that are structured as a Family Farm. The *eligible Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer-Based Business Venture applicant* must obtain at least one agreement from another member of the network engaged in the value chain on a marketing strategy. The *eligible Independent Producer applicant* must obtain at least one agreement from an eligible Agricultural Producer Group, Farmer or Rancher Cooperative, or Majority-Controlled Producer Based Business Venture engaged in the value-chain on a marketing strategy. For Planning Grants, examples of agreements include, but are not limited to, letters of intent to partner on marketing, distribution, or processing. For Working Capital Grants, examples of agreements include, but are not limited to, marketing agreements, distribution agreements, and processing agreements.

For Mid-Tier Value Chain projects, the applicant must currently own and

produce more than 50% of the raw commodity that will be used for the value-added product that is the subject of the proposal. Because the Agency recognizes that, in a supply chain network, a variety of raw agricultural commodity and value-added product ownership and transfer arrangements may be necessary, applicant ownership of the raw agricultural commodity and value-added product from raw through value-added is not necessarily required, as long as the proposal can demonstrate an increase in customer base and an increase in revenue returns to the applicant producers supplying the majority of the raw agricultural commodity for the project.

B. Cost Sharing or Matching

Matching Funds are required, must be at least equal to the amount of grant funds requested, and are subject to the same use restrictions as grant funds. Applicants must verify in their applications that eligible Matching Funds are available for the time period of the grant. Unless provided by other authorizing legislation, other Federal grant funds cannot be used as Matching Funds. Matching Funds must be spent at a rate equal to or greater than the rate at which grant funds are expended. If Matching Funds are provided in an amount exceeding the minimum requirement the applicant must spend their Matching Funds contribution at a proportional rate. For example, if an applicant proposes to provide 75 percent of the total Project cost in Matching Funds and a grant is awarded, the Agency expects that the grantee will expend at least $0.75 of Matching Funds for every $0.25 of grant funds expended.

Matching Funds must be provided by either the applicant or by a third party in the form of cash or eligible in-kind contributions. Applicants that are awarded grants may not change the source, type, or amount of Matching Funds proposed in their applications without prior written approval from the Agency. Matching Funds must be spent on eligible expenses and must be from eligible sources.

C. Other Eligibility Requirements

Product Eligibility: The project proposed must involve a Value-Added product as defined in Section I of this notice. There are five methods through which value-added can be demonstrated. Regardless of which method is used, an expansion of customer base and an increase in revenue to the agricultural producers must also be demonstrated.

1. A change in physical state occurs when an Agricultural Commodity cannot be returned to its original state. Examples of value-added products in this category are fish fillets, diced tomatoes, ethanol, bio-diesel, and wool rugs. Common production or harvesting methods are not considered a change in physical state. For example, dehydrated corn, bottled milk, raw fiber, Christmas trees, and cut flowers are not eligible in this category.

2. Production in a manner that enhances the value of the Agricultural Commodity occurs when a nonstandard production method adds value per unit of production over a standard production method. It is the Agency's position that only Working Capital applications are eligible for this category because the enhanced value must be demonstrated using information from a Feasibility Study and Business Plan developed for the Venture. Examples are organic carrots, eggs produced from free-range chickens, and beef produced from cattle fed a ''natural'' diet.

3. Physical segregation that enhances the value of the Agricultural Commodity occurs when a physical barrier (*i.e.* distance or a structure) separates a commodity from other varieties of the same commodity on the same farm during production and that the separation continues through the harvesting, processing, and marketing of the product or commodity. An example is genetically-modified corn and non-genetically modified corn produced on the same farm, but physically separated so that no cross-pollination occurs.

4. A source of farm- or ranch-based renewable energy is an Agricultural Commodity or Product used to generate energy on a farm or ranch. Technologies that convert agricultural commodities and products into energy (*e.g.* biomass, such as anerobic digesters, algae, *etc.*) are eligible in this category. On-farm generation of energy through wind, solar, geothermaland hydroelectric are eligible ONLY when they are used in the production of a value-added product. Wind, solar, geothermal and hydroelectric are not eligible if they are simply converted to electricity and sold off the farm. Fuels that are not generated on a farm or ranch owned or leased by the owners of the Venture are not eligible under this category, but may be considered under the first category.

5. Aggregation and marketing of locally-produced agricultural food products occurs when any food product made from an Agricultural Commodity is raised, produced, and marketed within 400 miles of the farm that produced the commodity or within the same State as that farm. Applications should demonstrate and quantify how local sales and marketing of an agricultural commodity or product will result in added value to the product. Examples include local grapes with specific characteristics attributable to the growing area, sold to a processor that will produce a select/vintage local wine, or local sweet corn advertised and sold at a premium as a fresher, locally produced alternative to non-local produce. Please note that organic produce or other types of products that are produced in a manner that enhances their value can apply for grants under this category as long as 100 percent of the marketing of the product will occur within 400 miles of the farm that produced the Agricultural Commodity.

Note: Applications that propose only branding, packaging, or other similar means of product differentiation are not eligible in any category. However, applications may propose branding, packaging, or other product differentiation activities as a *component* of a value-added strategy for products otherwise eligible in one of the above categories. Eligible activities must be directly related to the processing and marketing of the value-added agricultural commodity or product, and cannot include evaluation or analysis of related agricultural production activities for the agricultural commodity.

Purpose Eligibility: The application must specify whether grant funds are requested for planning or for working capital activities. Applicants may not request funds for both types of activities in one application. Working capital expenses are not considered eligible for Planning Grants and planning expenses are not considered eligible for Working Capital Grants. Applications requesting more than the maximum grant amount will be considered ineligible.

It is the Agency's position that applicants other than Independent Producers applying for a Working Capital Grant must demonstrate that the Venture has not been in operation more than two years at the time of application in order to show that the applicant is entering an Emerging Market. All applicants must demonstrate an increase in customer base and an increase in revenue returns to producers from their project.

Grant Period Eligibility: Applicants may propose a timeframe for the grant project up to a maximum 36 months in length. Projects cannot begin earlier than March 1, 2010 and cannot end later than February 28, 2013. Applications that request funds for a time period beginning prior to March 1, 2010 and/or ending after February 28, 2013 will be considered ineligible, as will applications that exceed a maximum 36 months in length. Applicants may propose a start date falling any time

during March 1, 2010 through September 30, 2010. If the project period will be longer than one year, the applicant must identify a separate, unique task(s) for the first year and for any subsequent year of the proposed project. The Agency will consider requests for an extension on a case-by-case basis if extenuating circumstances prevent a grantee from completing an award within the approved grant period, but no extensions can be approved to extend the grant period beyond a total of three years.

Multiple Grant Eligibility: An applicant can submit only one application in response to this notice. The application must designate whether the application submitted should be considered for the general funds program or for one of the reserved funding options.

Applicants who have already received a Planning Grant for the proposed Project cannot receive another Planning Grant for the same Project. Applicants who have already received a Working Capital Grant for a Project cannot receive any additional grants for that Project.

Current Grant Eligibility: If an applicant currently has a VAPG, it must be completed prior to November 30, 2009.

Judgment Eligibility: In accordance with 7 CFR 4284.6.

IV. Application and Submission Information

A. Address To Request Application Package

The application package for applying on paper for this funding opportunity can be obtained at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* Alternatively, applicants may contact their USDA Rural Development State Office. The State Office can be reached by calling 800–670–6553 and pressing ''1.'' For electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions therein.

B. Content and Form of Submission

Applications must be submitted on paper or electronically. An Application Guide may be viewed at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.* It is strongly recommended that applicants use the template provided on the Web site. The template can be filled out electronically and printed out for submission with the required forms for a paper submission or it can be filled out electronically and submitted as an attachment through Grants.gov.

If an application is submitted on paper, one signed original and one copy of the complete application must be submitted.

If the application is submitted electronically, the applicant must follow the instructions given at *http://www.grants.gov.* Applicants are strongly advised to visit the site well in advance of the application deadline to insure that they have obtained the proper authentication and have sufficient computer resources to complete the application.

The Agency will conduct an initial screening of all applications for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this notice to allow for an informed review. Information submitted as part of the application will be protected from disclosure to the extent permitted by law.

Applicants must complete and submit the elements listed below, except as noted in the next paragraph. Please note that the requirements in the following locations within 7 CFR part 4284 have been combined with other requirements to simplify the application and reduce duplication: 7 CFR 4284.910(c)(5)(i), 4284.910(c)(5)(ii), and 4284.910(c)(5)(iv).

Applicants requesting less than $50,000 are not required to submit the following items at the time of application. However, if selected for an award, the applicants will be required to submit these items as part of the conditions of the award: Form SF–424A (section IV, B.2), Form SF–424B (section IV, B.3), Title Page (section IV, B.4), Goals of the Project (section IV, B.8.i), and Performance Evaluation Criteria (section IV, B.8.ii).

1. *Form SF–424, ''Application for Federal Assistance.''* The form must be completed, signed and submitted as part of the application package. All applicants are also required to have an Employer Identification Number (or a Social Security Number if the applicant is an individual or steering committee) and a DUNS number (including individuals and sole proprietorships). The DUNS number is a nine-digit identification number which uniquely identifies business entities. To obtain a DUNS number, access *http://www.dnb.com/us,* or call (866) 705–5711.

2. *Form SF–424A, ''Budget Information—Non-Construction Programs.''* This form must be completed and submitted as part of the application package.

3. *Form SF–424B, ''Assurances—Non-Construction Programs.''* This form must be completed, signed, and submitted as part of the application package.

4. *Title Page (limited to one page).* The title page must include the title of the project and may include other relevant identifying information.

5. *Table of Contents.* A detailed Table of Contents (TOC) immediately following the title page is required.

6. *Executive Summary (limited to one page).* The Executive Summary should briefly describe the Project, including goals, tasks to be completed and other relevant information that provides a general overview of the Project. The applicant must specify whether they intend to compete in the General Funds or one of the Reserved Funds competitions and clearly state whether the application is for a Planning Grant or a Working Capital Grant and the grant amount requested.

7. *Eligibility Discussion (limited to six pages).* The applicant must provide the following information so that the Agency can assess the eligibility of the applicant and the proposed Project. Answers of zero or none may not disqualify an applicant, depending on what type of applicant organization is applying.

i. *Applicant Eligibility.* Applicants must provide the following information so that the Agency can determine the eligibility of the applicant organization for assistance.

- Describe the applicant in a brief statement (for example, individual farm or membership organization, *etc.*) and identify its legal structure (for example sole proprietorship, LLC, LLP, cooperative, non-profit organization, or others described in detail).
- Identify the owners or members who will be contributing the Agricultural Commodity to which value will be added to the Project. Applicants must provide the names of the individuals who are owners or members, as well as the percentage of their ownership in the organization. If the applicant organization is owned by entities other than individuals, it must identify those entities and provide a list of the individuals who own each entity. If the list is longer than a few lines, it should be attached as an appendix to the application and will not be counted toward the page limit of this section.
- A statement that certifies that these owners or members are actively and currently engaged in the production of the Agricultural Commodity.
- Describe how the applicant organization is governed or managed, including a description of whom and how many owners/members have voting rights, if applicable.

• The number of individuals on the governing board (*e.g.* board of directors).

• The number of individuals on the governing board who have voting rights and are currently engaged in the production of the Agricultural Commodity to which value will be added and will be providing that commodity to the Project.

• If the applicant organization is a membership organization, include the organization's mission statement, which must be copied from the organization's articles of incorporation, bylaws, or other governing documents.

• The amount of the Agricultural Commodity needed for the Project. Planning applications must provide an estimate.

• The amount of the Agricultural Commodity that will be provided by the owners or members of the applicant organization. Planning applications must provide an estimate.

• The amount of the Agricultural Commodity that will be purchased or donated from third-party sources.

• How the owners or members providing the Agricultural Commodity to the Project will maintain ownership of the commodity from its raw state to marketing the Value-Added Agricultural Product.

ii. *Product Eligibility. Applicants must provide the following information so that the Agency can determine the eligibility of the Value-Added Agricultural Product to be marketed.*

• The Agricultural Commodity to which value will be added.

• Describe the method or process through which value will be added. This must include at least one of the following: A change in physical state, a non-standard production method that enhances the commodity's value, physical segregation, on-farm or on-ranch generation of renewable energy, and/or a locally-produced agricultural food product.

• The dollar amount of value added per production unit to the Agricultural Commodity that is attributed to the value-added process. Applicants for planning grants must estimate this amount while applicants for working capital grants must use the amount from their Feasibility Study and Business Plan results.

• The Value-Added Agricultural Product that will be produced.

• Describe the expansion of customer base for the Value-Added Agricultural Product. Those applying for a planning grant must provide an estimate for the expansion of customer base. Those applying for a working capital grant must supply the relevant information from the Feasibility Study and Business Plan that was completed for the Venture. If no expansion of customer base exists or is likely to exist, the application is not eligible for funding.

• The amount of the increased portion of revenue derived from marketing the Value-Added Agricultural Product that will be available to the producers of the Agricultural Commodity to which value is added. Applicants for a planning grant must provide an estimate for the increase in revenue. Those applying for a working capital grant must supply the relevant information from the Feasibility Study and Business Plan that was completed for the Venture. If no increase in revenue exists or is likely to exist, the application is not eligible for funding.

iii. *Purpose Eligibility.* Applicants should specify whether grant funds will be used for eligible planning activities or working capital activities directly related to the processing and/or marketing of the value-added product. Applicants should specify the grant amount requested. The Agency will also evaluate the budget and work plan submitted in response to the Proposal Evaluation Criteria to determine eligibility. In addition, applicants for working capital activities should provide the following information that will be evaluated when determining Purpose Eligibility.

• A statement that an independent, third-party Feasibility Study has been conducted for the proposed Venture. The applicant must provide the name of the party who conducted the Feasibility Study and the date it was completed. The Feasibility Study should not be submitted with the application, but the Agency may request it at any time in order to facilitate its eligibility review.

• A statement that a Business Plan has been developed for the proposed Venture. The applicant must provide the name of the party who developed the Business Plan and the date it was completed. The Business Plan should not be submitted with the application, but the Agency may request it at any time in order to facilitate its eligibility review.

• Describe how long the applicant organization has been engaged in the Venture that is the subject of the application.

iv. *Reserved Funds Eligibility (The information below will not count towards proposal page limitation constraints.)*

(a) In addition to the above information, if applying for Beginning Farmer or Rancher or Socially Disadvantaged Farmer or Rancher reserved funds, provide documentation demonstrating that the applicant organization meets the definition of a Beginning Farmer or Rancher or a Socially Disadvantaged Farmer or Rancher.

(b) In addition to the above information, if applying for Mid-Tier Value Chain reserved funds, applicants must:

(1) Demonstrate that the *project* proposes development of a *Local or Regional Supply Network* of interconnected food-related business enterprises through which food products move from production through consumption in a local or regional area of the USA, including a description of the network, its component members, and its purpose;

(2) Describe at least two alliances, linkages or partnerships within the value chain that link independent producers with businesses and cooperatives that market Value-Added Agricultural Products in a manner that benefits Small- or Medium-Sized Farms that are structured as a Family Farm, including the names of the parties and the nature of their collaboration;

(3) Demonstrate how the project, due to the manner in which the VA product is marketed, will increase the profitability and competitiveness of at least two *eligible* Small- or Medium-Sized Farms or Ranches that are structured as a Family Farm ;

(4) Document that the eligible *Agriculture Producer Group (APG)/ Farmer or Rancher Cooperative (COOP)/ Majority-Controlled Producer Based Business Venture (MCPBBV) applicant organization* has obtained at least one agreement with another member of the supply network that is engaged in the value chain on a marketing strategy; or that the eligible *Independent Producer applicant* has obtained at least one agreement from an *eligible* APG/COOP/ MCPBBV engaged in the value-chain on a marketing strategy;

(5) Demonstrate that the *applicant* currently owns and produces more than 50% of the raw agricultural commodity that will be used for the value-added product that is the subject of the proposal; and

(6) Demonstrate that the project will result in an increase in customer base and an increase in revenue returns to the *applicant producers* supplying the majority of the raw agricultural commodity for the project.

8. *Proposal Narrative (limited to 15 pages).*

i. *Goals of the Project.* The application must include a clear statement of the ultimate goals of the Project, including an explanation of how a market will be expanded and the degree to which

incremental revenue will accrue to the benefit of the Agricultural Producer(s).

ii. *Performance Evaluation Criteria.* Applicants applying for Planning Grants must suggest at least one criterion by which their performance under a grant could be evaluated. Applicants applying for Working Capital Grants must identify the projected increase in customer base, revenue accruing to Independent Producers, and number of jobs attributed to the Project. Working capital projects with significant energy components must also identify the projected increase in capacity (*e.g.* gallons of ethanol produced annually, megawatt hours produced annually) attributed to the Project. Please note that these criteria are different from the Proposal Evaluation Criteria and are a separate requirement.

iii. *Proposal Evaluation Criteria.* Each of the proposal evaluation criteria referenced in Section V.A. of this funding announcement must be addressed, specifically and individually, in narrative form. Applications that do not address the appropriate criteria (Planning Grant applications must address Planning Grant evaluation criteria and Working Capital Grant applications must address Working Capital Grant evaluation criteria) will be considered ineligible.

9. *Certification of Matching Funds.* Applicants must certify that Matching Funds will be available at the same time grant funds are anticipated to be spent and that Matching Funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of Matching Funds will have been expended prior to submitting the request for reimbursement. This certification is a separate requirement from the verification of Matching Funds requirement. To fulfill this requirement, applicants must include a statement for this section that reads as follows: ''[INSERT NAME OF APPLICANT] certifies that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent in advance of grant funding, such that for every dollar of grant funds advanced, not less than an equal amount of matching funds will have been expended prior to submitting the request for reimbursement.'' A separate signature is not required.

10. *Verification of Matching Funds.* Applicants must provide documentation of all proposed Matching Funds, both cash and in-kind. The documentation below must be included in the Appendix. Template letters for each type of matching funds are available at *http://www.rurdev.usda.gov/rbs/coops/verifymatch031407.htm.*

i. *Matching funds provided by the applicant in cash.* A copy of a bank statement with an ending date within one month of the application submission and showing an ending balance equal to or greater than the amount of cash Matching Funds proposed is required.

ii. *Matching funds provided through a loan or line of credit.* The applicant must include a signed letter from the lending institution verifying the amount available, the purposes for which funds may be used, and the time period of availability of the funds. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching funds will be made available, must be included.

iii. *Matching funds provided by the applicant through an in-kind contribution.* The application must include a signed letter from the applicant verifying the goods or services to be donated, the value of the goods or services, and when the goods and services will be donated. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching contributions will be made available, must be included. Note that applicant in-kind match for planning grants should not include values for applicant time spent on feasibility or business planning activities due to a possible conflict of interest. Although applicants may participate with their consultant in the feasibility and business planning activities, they may not include their time as an in-kind match contribution to the project. This represents a possible conflict of interest and should be avoided in the application. Also note that if the applicant organization is purchasing goods or services for the grant (*e.g.* salaries, inventory), the contribution is considered a cash contribution and must be verified as described in paragraph i. above. Also, if an owner or employee of the applicant organization is donating goods or services, the contribution is considered a third-party in-kind contribution and must be verified as described in paragraph v. below.

iv. *Matching funds provided by a third party in cash.* The application must include a signed letter from that third party verifying how much cash will be donated and when it will be donated. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching funds will be made available, must be included.

v. *Matching Funds provided by a third party in-kind donation.* The application must include a signed letter from the third party verifying the goods or services to be donated, the value of the goods or services, and when the goods and services will be donated. Specific dates (month/day/year) corresponding to the proposed grant period or to dates within the grant period when matching contributions will be made available, must be included.

Verification for cash or in-kind contributions donated outside the proposed time period of the grant will not be accepted. Verification for in-kind contributions that are over-valued will not be accepted. The valuation process for the in-kind funds does not need to be included in the application, especially if it is lengthy, but the applicant must be able to demonstrate how the valuation was achieved at the time of notification of tentative selection for the grant award. If the applicant cannot satisfactorily demonstrate how the valuation was determined, the grant award may be withdrawn or the amount of the grant may be reduced.

Matching Funds are subject to the same use restrictions as grant funds. Matching Funds must be spent or donated during the grant period and the funds must be expended at a rate equal to or greater than the rate grant funds are expended. Some examples of acceptable uses for matching funds are: Skilled labor performing work required for the proposed Project, office supplies, and purchasing inventory. Some examples of unacceptable uses of matching funds are: Real property, fixed equipment, buildings, and vehicles.

Expected program income may not be used to fulfill the Matching Funds requirement at the time of application. If program income is earned during the time period of the grant, it is subject to the requirements of 7 CFR part 3015, subpart F and 7 CFR 3019.24 and any provisions in the Grant Agreement.

C. Submission Dates and Times

Application Deadline Date: November 30, 2009 for unreserved funds. November 30, 2009 for reserved funds.

Explanation of Deadlines: Paper applications must be postmarked, mailed, shipped, or sent overnight by the deadline date (*see* Section IV.F. for the address). Final electronic applications must be received by Grants.gov by the deadline date. If an application does not meet the deadline above, it will not be considered for funding. Applicants will be notified that their applications did not meet the submission deadline.

D. National Environmental Policy Act

All grants made under this NOFA are subject to the requirements of 7 CFR 1940 subpart G. Applications for planning purposes and technical assistance are generally categorically excluded from the environmental review process by § 1940.333, provided that the assistance is not related to the development of a specific site.

E. Intergovernmental Review of Applications

Executive Order (EO) 12372, Intergovernmental Review of Federal Programs, applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. A list of States that maintain an SPOC may be obtained at *http://www.whitehouse.gov/omb/grants/spoc.html.* If an applicant's State has an SPOC, the applicant may submit the application directly for review. Any comments obtained through the SPOC must be provided to Rural Development for consideration as part of the application. If the applicant's State has not established an SPOC, or the applicant does not want to submit the application, Rural Development will submit the application to the SPOC or other appropriate agency or agencies.

Applicants are also encouraged to contact their Rural Development State Office for assistance and questions on this process. The Rural Development State Office can be reached by calling 800–670–6553 and selecting option ''1'' or by viewing the following Web site: *http://www.rurdev.usda.gov/.*

F. Funding Restrictions

Funding restrictions apply to both grant funds and matching funds. Funds may only be used for planning activities or working capital for Projects focusing on processing and marketing a value-added product.

1. Examples of acceptable planning activities include:

i. Obtaining legal advice and assistance related to the proposed Venture;

ii. Conducting a Feasibility Study of a proposed Value-Added Venture to help determine the potential marketing success of the Venture;

iii. Developing a Business Plan that provides comprehensive details on the management, planning, and other operational aspects of a proposed Venture; and

iv. Developing a marketing plan for the proposed Value-Added product, including the identification of a market window, the identification of potential buyers, a description of the distribution system, and possible promotional campaigns.

2. Examples of acceptable working capital uses include:

i. Designing or purchasing an accounting system for the proposed Venture;

ii. Paying for salaries, utilities, and rental of office space;

iii. Purchasing inventory, office equipment (*e.g.* computers, printers, copiers, scanners), and office supplies (*e.g.* paper, pens, file folders); and

iv. Conducting a marketing campaign for the proposed Value-Added product.

3. No funds made available under this solicitation shall be used to:

i. Plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

ii. Purchase, rent, or install fixed equipment, including processing equipment;

iii. Purchase vehicles, including boats;

iv. Pay for the preparation of the grant application;

v. Pay expenses not directly related to the funded Venture;

vi. Fund political or lobbying activities;

vii. Fund any activities prohibited by 7 CFR parts 3015 and 3019;

viii. Fund architectural or engineering design work for a specific physical facility;

ix. Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility. The Agency considers these expenses to be ineligible because the intent of the program is to assist producers with marketing value-added products rather than producing Agricultural Commodities;

x. Fund research and development;

xi. Purchase land;

xii. Duplicate current services or replace or substitute support previously provided;

xiii. Pay costs of the Project incurred prior to the date of grant approval;

xiv. Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

xv. Pay any judgment or debt owed to the United States; or

xvi. Conduct activities on behalf of anyone other than a specific Independent Producer or group of Independent Producers. The Agency considers conducting industry-level Feasibility Studies and Business Plans that are also known as feasibility study templates or guides or business plan templates or guides to be ineligible because the assistance is not provided to a specific group of Independent Producers.

xvii. Pay for any goods or services provided by a person or entity who has a Conflict of Interest. Also, note that in-kind Matching Funds may not be provided by a person or entity that has a Conflict of Interest. *See* Section IV.B.10.iii of this notice for additional information.

G. Other Submission Requirements

Paper applications must be submitted to the Rural Development State Office for the State in which the Project will primarily take place. Addresses can be found online at: *http://www.rurdev.usda.gov/recd_map.html* or in the **ADDRESSES** section at the beginning of this Notice.

Applications can also be submitted electronically at *http://www.grants.gov.* Applications submitted by electronic mail or facsimile will not be accepted. Each application submission must contain all required documents in one envelope, if by mail or courier delivery service.

V. Application Review Information

A. Criteria

All eligible and complete applications will be evaluated based on the following criteria. Applications for Planning Grants have different criteria to address than applications for Working Capital Grants. Unless otherwise noted, all scoring for both Planning and Working Capital Grant applications will be done on a graduated scale reflecting how the criteria were addressed.

1. Criteria for Planning Grant Applications

i. *Nature of the proposed venture* (0–8 points). Projects will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. Evaluators may rely on their own knowledge and examples of similar ventures described in the proposal to form conclusions regarding this criterion. Points will be awarded based on the greatest expansion of markets and increased returns to producers.

ii. *Qualifications of those doing work* (0–8 points). Proposals will be reviewed for whether the personnel who are

responsible for doing proposed tasks, including those hired to do the studies, have the necessary qualifications. If a consultant or others are to be hired, more points may be awarded if the proposal includes evidence of their availability and commitment as well. If staff or consultants have not been selected at the time of application, the application should include specific descriptions of the qualifications required for the positions to be filled. Qualifications of the personnel and consultants should be discussed directly within the response to this criterion. If resumes are included, those pages will count toward the page limit for the narrative.

iii. *Commitments and support* (0–5 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Proposals will be reviewed for evidence that the project enjoys third party support and endorsement, with emphasis placed on financial and in-kind support as well as technical assistance. Support should be discussed directly within the response to this criterion. If support letters are included, those pages will count toward the page limit for the narrative. Points will be awarded based on the greatest level of documented and referenced commitment.

iv. *Project leadership* (0–8 points). The leadership abilities of individuals (*i.e.* owners, not consultants) who are proposing the Venture will be evaluated as to whether they are sufficient to support a conclusion of likely project success. Credit may be given for leadership evidenced in community or volunteer efforts. Leadership abilities should be discussed directly within the response to this criterion. If resumes are attached at the end of the application, those pages will count toward the page limit for the narrative.

v. *Work plan/budget* (0–8 points). Applicants must submit a work plan and budget. The work plan will be reviewed to determine whether it provides specific and detailed descriptions of tasks that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the planning activities and allocate these costs among the listed tasks. The source and use of grant and matching funds must be specified. Points may not be awarded unless sufficient detail is provided to determine if funds are being used for qualified purposes. Matching funds as well as grant funds must be accounted for in the budget to receive points. If the project period will be longer than one year, the work plan and budget must identify a separate, unique task(s) for the first year and for any subsequent year of the proposed project. Any applications proposing a project of longer than one year with duplicative or similar activities in each year is ineligible for funding.

vi. *Amount requested* (0 or 5 points). Two points will be awarded for grant requests of $50,000 or less. To determine the number of points to award, the Agency will use the amount indicated in the work plan and budget.

vii. *Project cost per owner-producer* (0–3 points). The applicant must state the number of Independent Producers that are owners of the Venture. Points will be calculated by dividing the amount of Federal funds requested by the total number of Independent Producers that are owners of the Venture. The allocation of points for this criterion shall be as follows:

- 0 points will be awarded to applications without enough information to determine the number of owner-producers.
- 1 point will be awarded to applications with a project cost per owner-producer of $70,001–$100,000.
- 2 points will be awarded to applications with a project cost per owner-producer of $35,001–$70,000.
- 3 points will be awarded to applications with a project cost per owner-producer of $1–$35,000.

An owner cannot be considered an Independent Producer unless he/she is a producer of the Agricultural Commodity to which value will be added as part of this Project. For Agriculture Producer Groups, the number used must be the number of Independent Producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a Venture, each family member shall count as one owner-producer.

Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. *Business management capabilities* (0–10 points). Applicants must discuss their financial management system, procurement procedures, personnel policies, property management system, and travel procedures. Up to two points can be awarded for each component of this criterion, based on the appropriateness of the system, procedures or policies to the size and structure of the business applying. Larger, more complex businesses will be expected to have more complex systems, procedures, and policies than smaller, less complex businesses.

ix. *Sustainability and economic impact* (0–15 points). Projects will be evaluated based on the expected sustainability of the Venture and the expected economic impact on the local economy.

x. *Type of applicant* (0 or 15 points). If an application is from an applicant that is a Beginning Farmer or Rancher, a Socially Disadvantaged Farmer or Rancher, or an operator of a Small or Medium-Sized Farm or Ranch that is structured as a Family Farm, 15 points will be awarded. Applicants must provide documentation that they meet one of these definitions to receive points.

xi. *Administrator points* (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 10 criteria). The Administrator of USDA Rural Development Business and Cooperative Programs may award additional points to recognize renewable energy, insure geographic distribution of grants, or encourage Value-Added Projects in under-served areas and groups. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

2. Criteria for Working Capital Applications

i. *Business viability* (0–8 points). Proposals will be evaluated on the basis of the technical and economic feasibility and sustainability of the Venture and the efficiency of operations. When responding to this criterion, applicants should reference critical data and information identified in the venture-specific feasibility study and business plan.

ii. *Customer base/increased returns* (0–8 points). Describe in detail how the customer base for the product being produced will expand because of the Value-Added Venture. Provide documented estimates of this expansion. Describe in detail how a greater portion of the revenue derived from the venture will be returned to the producers that are owners of the Venture. Applicants should also reference the pro forma financial statements developed for the Venture. Applications that demonstrate strong

growth in a market or customer base and greater Value-Added revenue accruing to producer-owners will receive more points than those that demonstrate less growth in markets and realized Value-Added returns.

iii. *Commitments and support* (0–5 points). Producer commitments will be evaluated on the basis of the number of Independent Producers currently involved as well as how many may potentially be involved, and the nature, level and quality of their contributions. End-user commitments will be evaluated on the basis of identified markets, letters of intent or contracts from potential buyers and the amount of output to be purchased. Applications will be reviewed for evidence that the Project enjoys third-party support and endorsement, with emphasis placed on financial and in-kind support as well as technical assistance. Support should be discussed directly within the response to this criterion. If support letters are included, those pages will count toward the page limit for the narrative. Points will be awarded based on the greatest level of documented and referenced commitment.

iv. *Management team/work force* (0–8 points). The education and capabilities of project managers and those who will operate the Venture must reflect the skills and experience necessary to affect Project success. The availability and quality of the labor force needed to operate the Venture will also be evaluated. Applicants must provide the information necessary to make these determinations. Applications that reflect successful track records managing similar projects will receive higher points for this criterion than those that do not reflect successful track records.

v. *Work plan/budget* (0–8 points). The work plan will be reviewed to determine whether it provides specific and detailed descriptions of tasks that will accomplish the project's goals and the budget will be reviewed for a detailed breakdown of estimated costs associated with the proposed activities and allocation of these costs among the listed tasks. The source and use of grant and matching funds must be specified. Points may not be awarded unless sufficient detail is provided to determine if funds are being used for qualified purposes. Matching Funds as well as grant funds must be accounted for in the budget to receive points. If the project period will be longer than one year, the work plan and budget must identify a separate, unique task(s) for the first year and for any subsequent year of the proposed project. Any applications proposing a project of longer than one year with duplicative or similar activities in each year is ineligible for funding.

vi. *Amount requested* (0 or 5 points). Two points will be awarded for grant requests of $150,000 or less. To determine the number of points to award, the Agency will use the amount indicated in the work plan and budget.

vii. *Project cost per owner-producer* (0–3 points). The applicant must state the number of Independent Producers that are owners of the Venture. Points will be calculated by dividing the amount of Federal funds requested by the total number of Independent Producers that are owners of the Venture. The allocation of points for this criterion shall be as follows:

- 0 points will be awarded to applications without enough information to determine the number of owner-producers.
- 1 point will be awarded to applications with a project cost per owner-producer of $200,001–$300,000.
- 2 points will be awarded to applications with a project cost per owner-producer of $100,001–$200,000.
- 3 points will be awarded to applications with a project cost per owner-producer of $1–$100,000.

An owner cannot be considered an Independent Producer unless he/she is a producer of the Agricultural Commodity to which value will be added as part of this Project. For Agriculture Producer Groups, the number used must be the number of Independent Producers represented who produce the commodity to which value will be added. In cases where family members (including husband and wife) are owners and producers in a Venture, each family member shall count as one owner-producer.

Applicants must be prepared to prove that the numbers and individuals identified meet the requirements specified upon notification of a grant award. Failure to do so shall result in withdrawal of the grant award.

viii. *Business management capabilities* (0–10 points). Applicants should discuss their financial management system, procurement procedures, personnel policies, property management system, and travel procedures. Up to two points can be awarded for each component of this criterion, based on the appropriateness of the system, procedures or policies to the size and structure of business applying. Larger, more complex businesses will be expected to have more complex systems, procedures, and policies than smaller, less complex businesses.

ix. *Sustainability and economic impact* (0–15 points). Projects will be evaluated based on the expected sustainability of the Venture and the expected economic impact on the local economy.

x. *Type of applicant* (0 or 15 points). If an application is from an applicant that is a Beginning Farmer or Rancher, a Socially Disadvantaged Farmer or Rancher, or an operator of a Small or Medium-Sized Farm or Ranch that is structured as a Family Farm, 15 points will be awarded. Applicants must provide documentation that they meet one of these definitions to receive points.

xi. *Administrator points* (up to 5 points, but not to exceed 10 percent of the total points awarded for the other 10 criteria). The Administrator of USDA Rural Development Business and Cooperative Programs may award additional points to recognize renewable energy, insure geographic distribution of grants, or encourage Value-Added projects in under-served areas and groups. Applicants may submit an explanation of how the technology proposed is innovative and/or specific information verifying that the project is in an under-served area.

B. Review and Selection Process

The Agency will conduct an initial screening of all applications for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this notice to allow for an informed review. As part of this review, the Rural Development State Office may require Working Capital applicants to submit their Feasibility Studies and Business Plans after the application deadline, but prior to the selection of grantees to facilitate the eligibility review process.

All eligible and complete proposals will be evaluated by three reviewers based on criteria i through v described in Section V.A.1. or 2. One of these reviewers will be a Rural Development employee not from the servicing State Office and the other two reviewers will be non-Federal persons. All reviewers must either: (1) Possess at least five years of working experience in an agriculture-related field, or (2) have obtained at least a bachelors degree in one or more of the following fields: Agri-business, business, economics, finance, or marketing and have a minimum of three years of experience in an agriculture-related field (*e.g.* farming, marketing, consulting, university professor, research, officer for trade association, government employee for an agricultural program). Once the scores for criteria i through v have been

completed by the three reviewers, they will be averaged to obtain the independent reviewer score.

The application will also receive one score from the Rural Development servicing State Office based on criteria vi through x. This score will be added to the independent reviewer score.

Finally, the Administrator of USDA Rural Development Business and Cooperative Programs will award any Administrator points based on Proposal Evaluation Criterion xi. These points will be added to the cumulative score for criteria i through x. A final ranking will be obtained based solely on the scores received for criteria i through xi. Applications will be funded in rank order until available funds are expended. Any unfunded applications for reserved funds will automatically be considered for unreserved funds, if eligible, according to rank order.

After the award selections are made, all applicants will be notified of the status of their applications by mail. Grantees must meet all statutory and regulatory program requirements in order to receive their award. In the event that a grantee cannot meet the requirements, the award will be withdrawn. Applicants for Working Capital Grants must submit complete, independent third-party Feasibility Studies and Business Plans before the grant award can be finalized. All Projects will be evaluated by the servicing State Office prior to finalizing the award to ensure that funded Projects are likely to be feasible in the proposed project area. Regardless of scoring, a Project determined to be unlikely to be feasible by the servicing State Office with concurrence by the National Office will not be funded.

C. Anticipated Announcement and Award Dates

Award Date: The announcement of award selections is expected to occur on or about January 7, 2010.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive a notification of tentative selection for funding from Rural Development. Applicants must comply with all applicable statutes, regulations, and this notice before the grant award will receive final approval.

Unsuccessful applicants will receive notification, including dispute resolution alternatives, by mail.

B. Administrative and National Policy Requirements

7 CFR parts 1901 subpart E, 3015, 3019, and 4284 are applicable and may be accessed at *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1.*

The following additional requirements apply to grantees selected for this program:

Grant Agreement.
Form RD 1942–46.
Form RD 1940–1, ''Request for Obligation of Funds.''
Form RD 1942–46, ''Letter of Intent to Meet Conditions.''
Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''
Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''
Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirements (Grants).''
Form RD 400–4, ''Assurance Agreement.''

Additional information on these requirements can be found at *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.*

Reporting Requirements: Grantees must provide Rural Development with a paper or electronic copy that includes all required signatures of the following reports. The reports must be submitted to the Agency contact listed on the Grant Agreement and Letter of Conditions. Failure to submit satisfactory reports on time may result in suspension or termination of the grant.

1. *Form SF–269 or SF–269A.* A ''Financial Status Report,'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30, regardless of when the grant period begins. Reports are due 30 days after the reporting period ends.

2. Semi-annual written performance reports that compare accomplishments to the objectives stated in the Grant Agreement, identify all tasks completed to date, and provide documentation supporting the reported results. The report should discuss any problems or delays that may affect completion of the project, as well as objectives for the next reporting period. Compliance with any special condition on the use of award funds should also be discussed. Reports are due as provided in paragraph 1. of this section. Supporting documentation for completed tasks includes, but is not limited to, Feasibility Studies, marketing plans, Business Plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent.

3. A Final Project written performance report that compares accomplishments to the objectives stated in the proposal is due within 90 days of the completion of the project. This report should identify all tasks completed and provide documentation supporting the reported results, as well as any problems or delays that affected completion of the project. Compliance with any special condition on the use of award funds should also be discussed. Supporting documentation for completed tasks includes, but is not limited to, Feasibility Studies, marketing plans, Business Plans, articles of incorporation and bylaws and an accounting of how working capital funds were spent. Planning Grant Projects must also report the estimated increase in revenue, increase in customer base, number of jobs created, and any other relevant economic indicators generated by continuing the project into its operational phase. Working Capital Grants must report the increase in revenue, increase in customer base, number of jobs created, any other relevant economic indicators generated by the project during the grant period in addition to total funds used for the Venture during the grant period. Total funds must include other Federal, State, local, and other funds used for the venture. Projects with significant energy components must also report expected or actual capacity (*e.g.* gallons of ethanol produced annually, megawatt hours produced annually) and any emissions reductions incurred during the project.

VII. Agency Contacts

For general questions about this announcement and for program technical assistance, applicants should contact their USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html* The State Office can also be reached by calling 800–670–6553 and pressing ''1.'' If an applicant is unable to contact their State Office, a nearby State Office may be contacted or the RBS National Office can be reached at Mail STOP 3250, Room 4016–South, 1400 Independence Avenue, SW., Washington, DC 20250–3250, Telephone: (202) 720–8460, e-mail: cpgrants@wdc.usda.gov. Applicants are also encouraged to visit the application Web site for application tools including an application guide and templates. The Web address is: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.*

VIII. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age,

disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (866) 632–9992 (voice) or (202) 401–0216 (TDD). USDA is an equal opportunity provider and employer.

Dated: August 25, 2009.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–21030 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–XY–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting—September 24, 2009—6:30 pm

In connection with its investigation into the cause of a February 7, 2008, an explosion and fire at the Imperial Sugar refinery northwest of Savannah, Georgia, the Chemical Safety and Hazard Investigation Board announces that it will convene a public meeting on September 24, 2009, starting at 6:30 pm at the Hilton Savannah DeSoto—15 East Liberty Street, Savannah, Georgia.

At the meeting CSB staff will present to the Board the results of their investigation into this incident. Key issues involved in the investigation concern combustible dust hazard recognition, minimizing combustible dust accumulation in the workplace, and equipment design and maintenance. This will be followed by a public comment period prior to a Board vote on the report.

Incident: On February 7, 2008, at about 7:15 p.m., a series of sugar dust explosions at the Imperial Sugar manufacturing facility in Port Wentworth, Georgia, resulted in 14 worker fatalities and 36 injuries. Eight workers died at the scene and six eventually succumbed to their injuries at the Augusta Burn Center. The explosions and subsequent fires destroyed the sugar packing buildings, palletizer room, and silos, and severely damaged the bulk train car loading area and parts of the sugar refinery.

Following the staff presentation and the conclusion of the public comment period, the Board will consider whether to approve the final report and recommendations. All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings presented by staff should be considered final. Only after the Board has considered the final staff presentation, listened to the witnesses and the public comments and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. E9–21127 Filed 8–28–09; 11:15 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Certain Cased Pencils from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On July 13, 2009, the Department of Commerce (''the Department'') published the final results of the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (''PRC''), covering the period December 1, 2006, through November 30, 2007. *See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) (''*Final Results*''). We are amending the *Final Results* to correct ministerial errors in the calculation of the weighted–average margin and the assessment rate applicable to entries by certain respondents to this proceeding, China First Pencil Co., Ltd. (''China First''), Shanghai Three Star Stationery Industry Co., Ltd. (''Three Star''), and Orient International Holding Shanghai Foreign Trade Corporation (''SFTC'') (collectively, ''Respondents''), pursuant to section 751(h) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.224(e). We released the final amended results to the parties on Wednesday, August 19, 2009. However, that version inadvertently included an incorrect weighted average margin for SFTC, so this amended final results correct that error. The error was discovered prior to publication in the **Federal Register**; consequently, this amended notice is being published in its place.

EFFECTIVE DATE: September 1, 2009.

FOR FURTHER INFORMATION CONTACT: David Layton or Alexander Montoro, at (202) 482–0371 or (202) 482–0238, respectively; AD/CD 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

On July 20, 2009, China First, Three Star and SFTC submitted timely allegations of ministerial errors pursuant to 19 CFR 351.224(c)(1). First, Respondents alleged that the Department did not use the correct conversion percentage for slats. Second, Respondents alleged that the Department did not calculate the surrogate value for slats correctly. Third, Respondents alleged that the Department valued both lacquer and the inputs to make lacquer. Fourth, Respondents alleged that the Department should not have inflated the surrogate value for plastic toppers. Finally, Respondents alleged that the Department should adjust the separate rate assigned to SFTC after correcting for the above–described allegations of ministerial errors. *See* Memorandum from David Layton, Alexander Montoro, and Joseph Shuler, International Trade Compliance Analysts, to Susan Kuhbach, Director of AD/CD Operations, Office 1, ''Ministerial Error Allegations'' (August 18, 2009) (''Ministerial Error Allegations Memo'').

On July 28, 2009, the petitioners to this proceeding, Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company (collectively, ''Petitioners''), submitted a reply to China First's, Three Star's and SFTC's ministerial error allegations. Petitioners argued that the Department must take into account China First's full lumber–to-slat yield loss ratio when calculating China First's slat surrogate value. In

addition, Petitioners argued that the Department should use an average of yield loss ratios reported by China First and another respondent, Shandong Rongxin Import & Export Co., Ltd (''Rongxin''), to calculate Three Star's yield loss ratio for slats. Moreover, Petitioners asserted that the Department properly calculated the surrogate value for slats, lacquer and plastic toppers.

Amended Final Results of Review

A ministerial error, as defined in section 751(h) of the Act, includes ''errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Secretary} considers ministerial.'' *See also* 19 CFR 351.224(f). After analyzing Respondents' allegations, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that the Department made ministerial errors in the *Final Results* by not using the correct yield loss conversion percentage to calculate China First's and Three Star's surrogate value for slats; and by using a surrogate dollar value not based on kilograms in its slat surrogate value calculation for China First, Three Star, and Rongxin. In addition, the Department made a ministerial error by valuing both lacquer and the inputs to make lacquer, resulting in double–counting. The Department also made a ministerial error by using an incorrect surrogate value for plastic toppers. Correcting for those ministerial errors also requires the Department to adjust the separate rate assigned to SFTC. For additional explanation, *see* the Ministerial Error Allegations Memo.

Therefore, we are amending the final results of administrative review of certain cased pencils from the PRC for the period December 1, 2006, through November 30, 2007, to include the revised surrogate value calculations for slats, lacquer and plastic toppers. The revised weighted–average percentage dumping margin for China First, Three Star, and SFTC are as follows:

Manufacturer/exporter	Margin (percent)
China First Pencil Company, Ltd. (which includes its affiliates China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., and Shanghai Great Wall Pencil Co., Ltd.)	10.41
Shanghai Three Star Stationery Industry Corp	59.62
Shandong Rongxin Import & Export Co., Ltd[1]	11.48
Orient International Holding Shanghai Foreign Trade Co., Ltd	32.21
PRC–wide Entity[2]	114.90

[1] We have not addressed comments pertaining to clerical error allegations relating to Rongxin's margin in the *Final Results* because the U.S. Court of International Trade has obtained jurisdiction of those results pursuant to Rongxin having filed a complaint. *See Shandong Rongxin Import & Export Co., Ltd. v. United States*, Court No. 09-00316 (Complaint filed August 8, 2009); *see also Zenith Elecs. Corp. v. United States*, 884 F.2d 556, 561 (Fed. Cir. 1989).

[2] The PRC-wide entity includes Anhui Import Export Co., Ltd., Guangdong Provincial Stationery and Sporting Goods Import Export Corporation, and Tianjin Custom Wood Processing Co., Ltd. A review was requested for these three companies.

Assessment Rate

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, see the *Final Results*.

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the amended final results of the administrative review.

Cash Deposit Requirements

The following deposit rates will be effective retroactively on any entries made on or after July 13, 2009, the date of publication of the *Final Results*, for all shipments of certain cased pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the reviewed companies named above will be the rates established in the amended final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit rate will be zero; (2) for any previously reviewed or investigated PRC or non–PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company–specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC–wide rate established in the final results of this review which is 114.90 percent; and (4) the cash–deposit rate for any non–PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Notification to Interested Parties

This notice is also the reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction 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 the terms of an APO is a sanctionable violation

Disclosure

We will disclose the calculations performed for these amended final results within five days of the date of publication of this notice to interested parties in accordance with 19 CFR 351.224(b).

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

Dated: August 24, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–21005 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with section 351.213 (2008) of the Department of Commerce (''the Department'') regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

RESPONDENT SELECTION

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review (''POR''). We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

OPPORTUNITY TO REQUEST A REVIEW:

Not later than the last day of September 2009,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

Antidumping Duty Proceedings	Period
BELARUS: Steel Concrete Reinforcing Bars. A–822–804	9/1/08 - 8/31/09
INDIA: Certain Lined Paper Products. A–533–843	9/1/08 - 8/31/09
INDONESIA: Certain Lined Paper Products. A–560–818	9/1/08 - 8/31/09
INDONESIA: Steel Concrete Reinforcing Bars. A–560–811	9/1/08 - 8/31/09
ITALY: Stainless Steel Wire Rod. A–475–820	9/1/08 - 8/31/09
JAPAN: Stainless Steel Wire Rod. A–588–843	9/1/08 - 8/31/09
LATVIA: Steel Concrete Reinforcing Bars. A–449–804	9/1/08 - 8/31/09
MOLDOVA: Steel Concrete Reinforcing Bars. A–841–804	9/1/08 - 8/31/09
POLAND: Steel Concrete Reinforcing Bars. A–455–803	9/1/08 - 8/31/09
REPUBLIC OF KOREA: Stainless Steel Wire Rod. A–580–829	9/1/08 - 8/31/09
SPAIN: Stainless Steel Wire Rod. A–469–807	9/1/08 - 8/31/09
TAIWAN: Raw Flexible Magnets. A–583–842	4/25/08 - 8/31/09
TAIWAN: Stainless Steel Wire Rod. A–583–828	9/1/08 - 8/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Certain Lined Paper Products. A–570–901	9/1/08 - 8/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Foundry Coke. A–570–862	9/1/08 - 8/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Freshwater Crawfish Tail Meat. A–570–848	9/1/08 - 8/31/09
THE PEOPLE'S REPUBLIC OF CHINA:Greige Polyester/Cotton Printcloth. A–570–101	9/1/08 - 8/31/09
THE PEOPLE'S REPUBLIC OF CHINA: New Pneumatic Off–The Road Tires. A–570–912	2/20/08 - 8/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Raw Flexible Magnets. A–570–922	4/25/08 - 8/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Steel Concrete Reinforcing Bars. A–570–860	9/1/08 - 8/31/09
UKRAINE: Silicomanganese.	

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

Antidumping Duty Proceedings	Period
A–823–805	9/1/08 - 8/31/09
UKRAINE: Solid Agricultural Grade Ammonium Nitrate.	
A–823–810	9/1/08 - 8/31/09
UKRAINE: Steel Concrete Reinforcing Bars.	
A–823–809	9/1/08 - 8/31/09
Countervailing Duty Proceedings.	
BRAZIL: Hot–Rolled Carbon Steel Flat Products.	
C–351–829	1/1/08 - 12/31/08
INDIA: Certain Lined Paper Products.	
C–533–844	1/1/08 - 12/31/08
INDONESIA: Certain Lined Paper Products.	
C–560–819	1/1/08 - 12/31/08
THE PEOPLE'S REPUBLIC OF CHINA: New Pneumatic Off–The Road Tires.	
C–570–913	12/17/07 - 12/31/08
THE PEOPLE'S REPUBLIC OF CHINA: Raw Flexible Magnets.	
C–570–923	9/2/08 - 12/31/08
Suspension Agreements.	
ARGENTINA: Lemon Juice.	
A–357–818	9/1/08 - 8/31/09
MEXICO: Lemon Juice.	
A–201–835	9/1/08 - 8/31/09

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration web site at http://ia.ita.doc.gov.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building.

Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of September 2009. If the Department does not receive, by the last day of September 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional–measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 21, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–21083 Filed 8–31–09; 8:45 am]

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[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

ACTION: Notice of upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for October 2009

The following Sunset Reviews are scheduled for initiation in October 2009 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping duty proceedings	Department contact
Certain Preserved Mushrooms from Chile. (A–337–804) (2nd Review)	Brandon Farlander (202) 482–0182.
Certain Preserved Mushrooms from India. (A–533–813) (2nd Review)	Brandon Farlander (202) 482–0182.
Certain Preserved Mushrooms from Indonesia. (A–560–802) (2nd Review)	Brandon Farlander (202) 482–0182.
Certain Preserved Mushrooms from the PRC. (A–570–851) (2nd Review)	Dana Mermelstein (202) 482–1391.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders are scheduled for initiation in October 2009.

Suspended Investigations

No Sunset Review of suspended investigations are scheduled for initiation in October 2009.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) . The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

August 14, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–21084 Filed 8–31–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–846)

Certain Hot–Rolled Flat–Rolled Carbon–Quality Steel Products from Japan: Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: September 1, 2009.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, AD/CD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2009, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping order on certain hot–rolled flat–rolled carbon–quality steel products from Japan for the period June 1, 2008 through May 31, 2009. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 74 FR 26202 (June 1, 2009).

On June 30, 2009, in accordance with 19 CFR 351.213(b), the Department received a timely request from Nippon Steel Corporation (NSC) to conduct an administrative review of NSC. NSC was the only party to request this administrative review.

On July 29, 2009, the Department published a notice of initiation of the antidumping duty administrative review of certain hot–rolled flat–rolled carbon–quality steel products from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 74 FR 37690 (July 29, 2009) (*Initiation Notice*).

On August 14, 2009, NSC timely withdrew its request for review. Thus we are rescinding this administrative review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of

the requested review. On August 14, 2009, NSC withdrew its request for an administrative review. NSC withdrew its request before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order on certain hot–rolled flat–rolled carbon–quality steel products from Japan for the period discussed. Therefore, in response to NSC's withdrawal of its request for review, and pursuant to 19 CFR 351.213(d)(1), the Department rescinds the administrative review of the antidumping duty order on certain hot–rolled flat–rolled carbon–quality steel products from Japan for the period June 1, 2008 through May 31, 2009.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Since NSC's review is being 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 CPB 15 days after publication of this rescission notice in the **Federal Register**.

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 protection 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 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–21085 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR23

Gulf of Mexico Fishery Management Council; Public Scoping Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene Scoping Hearings on Spiny Lobster Amendment 10 (in Marathon and Key West, FL only), Generic ACL/AM Amendment and Amendments 18 and 20 to the Coastal Migratory Pelagics (CMP) Fishery Management Plan (FMP).

DATES: The scoping hearings will be held on September 21 through September 24, 2009 at nine locations throughout the Gulf of Mexico. For specific dates, times and subjects see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The public hearings will be held in the following locations: Madeira Beach, Marathon, Key West and Panama City, FL, Biloxi, MS, Houston and Corpus Christi, TX, Grand Isle, LA and Orange Beach, AL. For specific dates, times and subjects see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Fishery Biologist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) has scheduled nine scoping hearings on Spiny Lobster Amendment 10, Generic ACL/AM Amendment, and Amendments 18 and 20 to the Coastal Migratory Pelagics (CMP) Fishery Management Plan (FMP). In 2006 the Magnuson-Stevens Fishery Conservation and Management Act was reauthorized and included a number of changes to improve conservation of managed fishery resources. The goals require that conservation and management prevent overfishing while achieving, on a continuous basis optimum yield for each fishery in the United States. Therefore included in these changes are requirements for the Regional Councils to establish annual catch limits (ACLs) and accountability measures (AMs). Accountability measures are management controls to prevent the ACLs from being exceeded and to correct by either in-season or post-season monitoring if they occur. These measures must be implemented by 2010 for stocks experiencing overfishing and by 2011 for all others.

The Gulf Council and the South Atlantic Fishery Management Council are jointly developing two separate amendments to address the ACLs and AMs; the Spiny Lobster Amendment 10 and the CMP Amendments 18 and 20. These two joint amendments address several species within the jointly management FMP. For example, the Spiny Lobster Amendment 10 addresses ACLs and AMs for the following species: Caribbean spiny lobster, smoothtail spiny lobster, spotted spiny lobster, Spanish slipper lobster, and ridged slipper lobster. Whereas, the joint CMP FMP Amendments 18 and 20 address ACLs and AMs for the following species: king mackerel, Spanish mackerel, and cobia. The Generic ACL/AM Amendment addresses all other federally managed species in the Gulf of Mexico. There are several questions and issues in each amendment for discussion. The public is encouraged to attend and provide comments on these three amendments.

These public hearings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

•Monday, September 21, 2009, Louisiana Wildlife & Fisheries Research Lab, 195 Ludwig Annex, Grand Isle, LA 70358, telephone: (985) 787–2163;

•Monday, September 21, 2009, Monroe County Harvey Government Center, 1200 Truman Avenue, Key West, FL 33040;

•Tuesday, September 22, 2009, Holiday Inn, 1102 S. Shoreline, Corpus Christi, TX 78401, telephone: (361) 883–5731;

•Tuesday, September 22, 2009, Banana Bay Resort, 4590 Overseas Highway, Marathon, FL 33050, telephone: (305) 743–3500;

•Tuesday, September 22, 2009, Best Western, 7921 Lamar Poole Road, Biloxi, MS 39532, telephone: (228) 875–7111;

•Wednesday, September 23, 2009, City of Orange Beach Parks & Recreation, 27235 Canal Road, Orange

Beach, AL 36561, telephone: (251) 981–6028;

•Wednesday, September 23, 2009, SpringHill Suites, 7922 Mosley Road, Houston, TX 77061;

•Thursday, September 24, 2009, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408, telephone: (850) 234–6541;

This public hearing will begin at 6:30 p.m. and conclude at the end of public testimony or no later than 9:30 p.m. at the following location:

•Wednesday, September 23, 2009, City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708, telephone: (727) 391–9951.

Copies of the Amendment can be obtained by calling the Council office at (813) 348–1630.Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: August 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–21009 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR28

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Management Council (Council) and NMFS will hold a Coastal Pelagic Species (CPS) Stock Assessment Review (STAR) Panel meeting to review survey results and the current full assessment of Pacific sardine stock status.

DATES: The meeting is scheduled for Monday, September 21, 2009 through Friday September 25, 2009. Monday through Thursday sessions are scheduled from 9 a.m. to 5 p.m. and Friday's session is scheduled from 8 a.m. until business for the day is completed.

ADDRESSES: The STAR Panel will be held at the NMFS Southwest Fisheries Science Center (SWFSC), Green Room, 8604 La Jolla Shores Drive, La Jolla, CA 92037, telephone: (858) 334–2800.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the CPS STAR Panel meeting is to review draft stock assessment and survey documents and any other pertinent information for Pacific sardine and work with the Pacific sardine Stock Assessment Team to make necessary revisions and produce STAR Panel reports. The STAR Panel reports will be for use by the Pacific Council family and other interested persons for developing management recommendations for the 2010 Pacific sardine fishery.

Although non-emergency issues not contained in this notice may arise during the STAR Panel meeting, those issues may not be the subject of formal action during this meeting. Formal action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Entry to the SWFSC requires visitors to register with the front office each morning. A visitor's badge, which must be worn while at the SWFSC, will be issued to all meeting participants. Since parking is at a premium at the SWFSC, car pooling, and mass transit are encouraged.

Dated: August 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–21013 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR26

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee on September 16, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, September 16, 2009 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732–6000; fax: (401) 739–5715.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Scientific and Statistical Committee (SSC) will meet to finalize ABCs for herring and red crab, correct the skate complex ABC and begin the development of 2010–2014 research recommendations. Specifically, the SSC will review the available information provided by the Herring Plan Development Team (PDT) and develop a recommendation regarding the specification of acceptable biological catch (ABC) for the 2010–2012 fishing years, as well as an ABC control rule; review the available information provided by the Red Crab PDT and develop recommendations specifying ABC for the 2010 fishing year, as well as an ABC control rule for future years; correct the 2010–11 skate complex ABC to be included in Amendment 3 to the Skate FMP (the recalculation will include the 2008 spring survey values for little skate); and discuss materials and tasking to update NEFMC research recommendations for 2010–2014.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those

issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–21012 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR25

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a web based meeting of the Standing Scientific and Statistical Committee (SSC).

DATES: The webinar meeting will convene at 9:15 a.m. Eastern Time on Wednesday, September 16, 2009 and is expected to last two to four hours.

ADDRESSES: The webinar will be accessible via internet. Please go to the Gulf of Mexico Fishery Management Council's website at *www.gulfcouncil.org* for instructions.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The SSC will meet to discuss annual review of the Council's 5-year research plan, a review of changes to the SEDAR procedure, review and approval of the terms of reference for the SEDAR 22 assessment of yellowedge grouper and tilefish which will be conducted in 2010, and a discussion on holding a future workshop on venting and barotraumas of fishes.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SSCs will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

This webinar is accessible to people with disabilities. For assistance with any of our webinars contact Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the webinar.

Dated: August 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–21011 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR24

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet in Seattle, WA. The meeting is open to the public.

DATES: The meeting will be held on Friday September 18, 2009, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Leif Erickson Lodge, 2245 NW 57th, Seattle, WA, 98107.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Dr. Diana Stram, Council Staff, telephone: (907) 271–2809 or Steve Minor, (360) 440–4737.

SUPPLEMENTARY INFORMATION: The Committee will review the (1) the Economic Data Review revision process, in the form of a work session with AFSC staff including reports from the CV, CP and FP/SP work groups and (b) a presentation by the RAM Division on the soon to be implemented on-line transfer system.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: August 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–21010 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XR22

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council)

Herring Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, September 17, 2009 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732–6000; fax: (401)732–0261.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

Agenda:

1. Continue development of catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP), which may include but are not limited to: specific monitoring and reporting requirements for herring vessels and processors, observer coverage and at-sea monitoring, shoreside/dockside monitoring and sampling, electronic reporting, video-based monitoring, maximized retention, catch monitoring and control plans, and vessel monitoring system (VMS) requirements; develop Herring Committee recommendations.
2. Address other issues related to Amendment 5, as necessary.
3. Closed session to review Herring Advisory Panel applications for one available seat on the AP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: August 27, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–21008 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a joint meeting of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 Decennial Census, including the Integrated Communications Campaign, 2010 Partnerships, and other decennial activities. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on October 28–30, 2009. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: October 28–30, 2009. On October 28, the meeting will begin at approximately 1 p.m. and end at approximately 5 p.m. On October 29, the meeting will begin at approximately 9 a.m. and end at approximately 4:45 p.m. On October 30, the meeting will begin at approximately 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233; telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations comprise nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective and advice on research and design plans for the 2010 Decennial Census, the American Community Survey, and other related programs particularly as they pertain to an accurate count of these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: August 26, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–21070 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations (CACPA). The Committee will address policy, research, and technical issues related to 2010 Decennial Census Programs. The Committee also will discuss several economic initiatives, statistical and demographic program

topics, as well as issues pertaining to 2010 Census communications. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: October 8–9, 2009. On October 8, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 5:15 p.m. On October 9, the meeting will begin at approximately 8:30 a.m. and adjourn at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233; telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: CACPA is composed of 36 members, appointed by the presidents of the American Economic Association, the American Statistical Association, the Population Association of America, and the Chairperson of the Board of the American Marketing Association in conjunction with the Director, U.S. Census Bureau. The Committee addresses Census Bureau programs and activities related to each respective association's area of expertise. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, section 10).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Committee Liaison Officer named above. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–3231 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: August 26, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–21082 Filed 8–31–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

U.S. Travel and Tourism Advisory Board: Meeting of the U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The U.S. Travel and Tourism Advisory Board (Board) will hold a meeting to discuss topics related to the travel and tourism industry. The Board was re-chartered on September 21, 2007, to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

DATES: September 16, 2009.

Time: 2 p.m. (ET).

ADDRESSES: Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230. Because of building security, all non-government attendees must pre-register. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than September 10, 2009, to J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–4501, *Marc.Chittum@mail.doc.gov.*

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–4501, e-mail: *Marc.Chittum@mail.doc.gov.*

Dated: August 27, 2009.

J. Marc Chittum,

Executive Secretary, U. S. Travel and Tourism Advisory Board.

[FR Doc. E9–21167 Filed 8–28–09; 4:15 pm]

BILLING CODE 3510–DR–P

COMMODITY FUTURES TRADING COMMISSION

Energy and Environmental Markets Advisory Committee Meeting

The Commodity Futures Trading Commission's Energy and Environmental Markets Advisory Committee will conduct a meeting on Wednesday, September 16, 2009, from 8 a.m. until 11 a.m. The meeting will be convened in the Commission's New York Regional Office, 140 Broadway, 19th Floor, New York, NY 10005, and is open to the public. Members of the public can view the meeting onsite by webcast at two additional locations: the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; and the Commission's Chicago Regional Office, 525 West Monroe Street, Suite 1100, Chicago, IL 60661. In addition, members of the public may listen to the meeting by telephone. The public access call-in numbers are (866) 312–4390 (U.S.) and (404) 537–3379 (International). When calling in, please request Conference No. 20577008.

To view the live webcast from a desktop PC with Internet access go to *http://www.cftc.gov* and click on the view webcast link. For PowerPoint presentations go to *http://www.cftc.gov,* click on view webcast link and select ''click here to download PowerPoint presentations.''

The purpose of the meeting is to discuss energy and environmental market issues. The meeting will be chaired by Commissioner Bart Chilton, who is Chairman and Designated Federal Official of the Energy and Environmental Markets Advisory Committee.

The agenda will consist of the following:

- Call to Order and Introduction.
- Opening Remarks by Commissioners.
- Energy Market Overview.
- Recent CFTC Hearings on Position Limits and Hedge Exemptions.
- Regulatory Reform Proposal and Proposed Legislation to Regulate OTC Derivatives.
- Carbon Markets and Proposed Legislation.
- Discussion of Future Meetings and Topics of Interest and Adjournment.

Any member of the public who wishes to file a written statement with the committee should mail a copy of the statement to the attention of: Energy and Environmental Markets Advisory Committee, c/o Commissioner Bart Chilton, Commodity Futures Trading Commission, Three Lafayette Centre,

1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Chilton in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Commissioner Bart Chilton's office at (202) 418–5060.

Issued by the Commission in Washington, DC on August 26, 2009.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–21028 Filed 8–31–09; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday September 18, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–21152 Filed 8–28–09; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission

TIME AND DATE: 11 a.m., Friday September 4, 2009

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed

MATTERS TO BE CONSIDERED: Surveillance matters

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–21164 Filed 8–28–09; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., September 16, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–21161 Filed 8–28–09; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday September 11, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–21163 Filed 8–28–09; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 25, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9–21151 Filed 8–28–09; 12:00 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, September 16, 2009, 1 p.m.–3 p.m.

PLACE: The Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. Call in number: (703) 418–1234.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1–1:45 p.m.

I. Chair's Opening Comments.
II. Consideration of Previous Meeting's Minutes.
III. CEO Report.
IV. Committee Reports: Oversight, Governance, and Audit Committee; Program, Budget, and Evaluation Committee; and External Relations Committee.

1:45–3 p.m.

V. Public Testimony on United We Serve Summer and 9/11 Activities.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Monday, September 7, 2009.

CONTACT PERSON FOR MORE INFORMATION: Emily Samose, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 9613C, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–7564. Fax (202) 606–3460. TDD: (202) 606–3472. E-mail: *esamose@cns.gov.*

Dated: August 27, 2009.

Frank R. Trinity,

General Counsel.

[FR Doc. E9–21220 Filed 8–28–09; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.132A and 84.400A.

Note: This competition invites applications from eligible applicants serving American Samoa only.

Dates:

Applications Available: September 1, 2009.

Deadline for Transmittal of Applications: September 16, 2009.

Deadline for Intergovernmental Review: November 30, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers that comply with the standards and assurances in section 725 of part C of title VII of the Rehabilitation Act of 1973, as amended (the Act), consistent with the design included in the State plan for establishing a statewide network of centers.

Program Authority: 29 U.S.C. 796f–1; American Recovery and Reinvestment Act of 2009, Public Law 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 364 and 366.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $154,046 from the Department of Education's FY 2009 appropriation and $46,020 from the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (ARRA). The purposes of the ARRA include the following:

(1) To preserve and create jobs and promote economic recovery;

(2) To assist those most impacted by the recession;

(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health;

(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefit; and

(5) To stabilize State and local government budgets in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

Estimated Number of Awards: 1, for an eligible applicant serving American Samoa.

States and territories	Estimated available funds	Estimated number of awards
American Samoa	$154,046 (84.132A) and $46,020 (84.400A)	1

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible to apply, an applicant must—

(a) Be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) Have the power and authority to—

(1) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within any State in which the Secretary has approved the State plan required by section 704 of the Act or in a bordering State; and

(2) Receive and administer—

(i) Funds under 34 CFR part 366;

(ii) Funds and contributions from private or public sources that may be used in support of a center; and

(iii) Funds from other public and private programs;

(c) Be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) Either—

(1) Not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location;

(e) Propose to serve one or more of the geographic areas that are identified as unserved or underserved by the States and territories listed under *Estimated Number of Awards* in this notice; and

(f) Submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or territory whose geographic area or areas the applicant proposes to serve.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA numbers 84.132A and 84.400A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: September 1, 2009.

Deadline for Transmittal of Applications: September 16, 2009.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including

dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: November 30, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Centers for Independent Living program, CFDA Numbers 84.132A and 84.400A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sue Rankin-White, U.S. Department of Education, 400 Maryland Avenue, SW., room 5013, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7593.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.132A and 84.400A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.132A and 84.400A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 366.27 and are listed in the application package.

2. *Review and Selection Process:* Consistent with 34 CFR 366.25, in reviewing an application for an award, we also consider comments regarding the application, if any, by the Statewide Independent Living Council in the State or territory in which the applicant is located.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant. In addition, the GAN includes terms and conditions necessary for effective implementation of data collection and accountability requirements under the ARRA.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Some of the funds awarded through this program were appropriated under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111–5, and are subject to additional accountability and transparency reporting requirements, which are described in section 1512(c) of the ARRA. Grantees receiving funds provided by the ARRA must be able to distinguish these funds from any other funds they receive through this program. Recipients of ARRA funds will be required to submit quarterly reports on the expenditure of these funds no later than ten days after the end of each calendar quarter through a centralized reporting Web site administered by the Office of Management and Budget (OMB): *http://www.federalreporting.gov.* The information reported at this Web site will be available to the Department, the White House, OMB and the public on *http://www.Recovery.gov.* Additional guidance on the use of ARRA funds by centers for independent living can be found at: *http://www.ed.gov/print/policy/gen/leg/recovery/factsheet/rehab-act.html.* Further detail on the reporting requirements under ARRA can be found

at *http://www.recovery.gov/?q=node/579*.

4. *Performance Measures:* Pursuant to the Government Performance and Results Act of 1993 (GPRA), the Department measures outcomes in the following three areas to evaluate the overall effectiveness of projects funded under this competition: (1) The effectiveness of individual services in enabling consumers to access previously unavailable transportation, appropriate accommodations to receive health care services, and/or assistive technology resulting in increased independence in at least one significant life area; (2) the effectiveness of individual services designed to help consumers move out of institutions and into community-based settings; and (3) the extent to which projects are participating in community activities to expand access to transportation, health care, assistive technology, and housing for individuals with disabilities in their communities. Grantees will be required to report annually on the percentage of their consumers who achieve their individual goals in the first two areas and on the percentage of their staff, board members, and consumers involved in community activities related to the third area.

VII. Agency Contact

For Further Information Contact: Sue Rankin-White, U.S. Department of Education, 400 Maryland Avenue, SW., room 5013, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7312.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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

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

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

Dated: August 27, 2009.

Jennifer Sheehy,

Director of Policy and Planning for Special Education and Rehabilitative Services.

[FR Doc. E9–21081 Filed 8–31–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 17, 2009, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Committee Chairs' Comments.
- Presentations.
- Administrative Issues.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks Taken As Appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC on August 26, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21117 Filed 8–31–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 23, 2009, 8 a.m.–5:30 p.m., Thursday, September 24, 2009, 8 a.m.–12:30 p.m.

ADDRESSES: Hilton Garden Inn Idaho Falls, 700 Lindsay Boulevard, Idaho Falls, Idaho, Phone: (208) 522–9500, Fax: (208) 522–9501.

FOR FURTHER INFORMATION CONTACT: Catherine Alexander Brennan, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Phone: (202) 586–7711.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics:

Wednesday, September 23, 2009

○ EM Visions, Priorities, Updates, and American Recovery and Reinvestment Act Discussion;

○ EM Headquarters Budget Update and Key Issues;

○ EM SSAB Chairs' Roundtable Discussion: The EM Budget Feedback Process;

○ EM SSAB Chairs' Round Robin: Top Three Site-Specific Issues, EM SSAB Accomplishments, and Major Board Activities;

○ EM Headquarters Update: Science and Technology;

○ Idaho National Laboratory Presentation;

○ EM SSAB Chairs' Roundtable Discussion: Recommendation Process and Product Development.

Thursday, September 24, 2009

○ EM Headquarters Update: Waste Disposition;

○ EM SSAB Chairs' Roundtable Discussion: Product Development.

Public Participation: The EM SSAB Chairs welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Catherine Alexander Brennan at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, Catherine Alexander Brennan, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact Catherine Alexander Brennan. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Catherine Alexander Brennan at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC on August 25, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–21119 Filed 8–31–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 20, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–46–002.

Applicants: Entergy Nuclear Generation Company, Entergy Nuclear Palisades, LLC, Entergy Nuclear Power Marketing, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC.

Description: Amended Application Under Section 203 of the Federal Power Act for Authorization of Indirect Disposition of Jurisdictional Facilities and Request for Waivers of Entergy Nuclear Generation Company, *et al.*

Filed Date: 08/12/2009.

Accession Number: 20090812–5091.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 02, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–136–006.

Applicants: FortisUS Energy Corporation.

Description: Motion of FortisUS Energy Corporation's Second Supplement to Notice of Non-Material Change in Status.

Filed Date: 08/19/2009.

Accession Number: 20090819–5087.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 09, 2009.

Docket Numbers: ER09–1180–002.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies submits notification that they intend to transition to webTrans and webOASIS on 9/28/09 and revisions revising the 6/1/09 filing.

Filed Date: 08/18/2009.

Accession Number: 20090819–0706.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1404–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits certain revisions to the Restated Power Service Agreement *etc.*

Filed Date: 08/18/2009.

Accession Number: 20090819–0627.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1405–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits certain revisions to the Restated Power Service Agreement *etc.*

Filed Date: 08/18/2009.

Accession Number: 20090819–0628.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1406–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits certain revisions to the Restated Power Service Agreement between Wisconsin Electric and Ontonagon County Rural Electrification Association.

Filed Date: 08/18/2009.

Accession Number: 20090819–0629.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1407–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits certain tariff revisions to its Formula Rate Wholesale Sales Tariff.

Filed Date: 08/19/2009.

Accession Number: 20090819–0630.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 09, 2009.

Docket Numbers: ER09–1606–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation *et al.* submits the Local Balancing Authority Area Operations Coordination Agreement between the Parties.

Filed Date: 08/19/2009.

Accession Number: 20090819–0705.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 09, 2009.

Docket Numbers: ER09–1607–000.

Applicants: Barton Windpower II LLC.

Description: Barton Windpower II LLC submits Notice of Cancellation of its market-based rate tariff, FERC Electric, Original Volume 1.

Filed Date: 08/19/2009.

Accession Number: 20090819–0704.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 09, 2009.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD09–10–000.
Applicants: North American Electric Reliability Corp.
Description: North American Electric Reliability Corporation Petition for Approval of Proposed Reliability Standard NUC–001–2–Nuclear Plant Interface Coordination.
Filed Date: 08/14/2009.
Accession Number: 20090814–5127.
Comment Date: 5 p.m. Eastern Time on Monday, September 14, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–20996 Filed 8–31–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 21, 2009.

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

Docket Numbers: RP09–906–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Company submits Tenth Revised Sheet No 4 to FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.
Filed Date: 08/19/2009.
Accession Number: 20090819–0642.
Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–912–000.
Applicants: Venice Gathering System, LLC.
Description: Venice Gathering System, LLC submits Ninth Revised Sheet 4 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.
Filed Date: 08/19/2009.
Accession Number: 20090820–0050.
Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–913–000.
Applicants: Equitrans, L.P.
Description: Equitrans, LP submits Twenty-Fifth Revised Sheet 5 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.
Filed Date: 08/20/2009.
Accession Number: 20090821–0105.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 01, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–21000 Filed 8–31–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 24, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4515–010.
Applicants: Cadillac Renewable Energy LLC.
Description: Cadillac Renewable Energy, LLC submits Substitute Original Sheet No 3.
Filed Date: 08/18/2009.
Accession Number: 20090824–0033.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER07–1356–011; ER00–2885–025; ER07–1112–009; ER01–2765–024; ER02–2102–024; ER03–1283–019; ER05–1232–020; ER07–1113–009; ER07–1116–008; ER07–1117–011; ER07–1118–010; ER07–1358–010; ER09–1141–003; ER09–335–006; ER09–609–002.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, LLC, Utility Contract Funding, LLC, Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, LLC, J.P. Morgan Commodities Canada Corporation, BE Rayle LLC

Description: Notice of Non-Material Change in Status of the JPMorgan Sellers.

Filed Date: 08/21/2009.

Accession Number: 20090821–5105.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER07–1106–005; ER02–1884–009.

Applicants: ArcLight Energy Marketing, LLC; Waterside Power, LLC

Description: ArcLight Energy Marketing, LLC *et al.* submits a notice of non-material change in status.

Filed Date: 08/20/2009.

Accession Number: 20090821–0165.

Comment Date: 5 p.m. Eastern Time on Thursday, September 10, 2009.

Docket Numbers: ER08–1288–005; ER07–357–006; ER03–1340–005

Applicants: Wapsipinicon Wind Project, LLC; Fenton Power Partners I, LLC; Chanarambie Power Partners LLC.

Description: Wapsipinicon Wind Project, LLC *et al.* submits a change in status filing, triennial update and revision of tariffs.

Filed Date: 08/20/2009.

Accession Number: 20090821–0166.

Comment Date: 5 p.m. Eastern Time on Monday, October 19, 2009.

Docket Numbers: ER09–134–003; ER09–135–004; ER09–136–003; ER09–137–003;

Applicants: FirstEnergy Solutions Corp.; FirstEnergy Generation Corp.; FirstEnergy Nuclear Generation Corp.; FirstEnergy Generation Mansfield Unit 1.

Description: FirstEnergy Solutions Corp *et al.* submits compliance filing regarding the Commission's 7/31/09 Order on Rehearing.

Filed Date: 08/21/2009.

Accession Number: 20090824–0028.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–921–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 14.

Filed Date: 08/21/2009.

Accession Number: 20090824–0113.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1476–001; ER04–1113–002; ER06–270–002; ER06–271–002; ER09–1477–001.

Applicants: Solios Asset Management LLC; Pythagoras Global Investors L.P.; Solios Asset Management LLC; Solios Power, LLC; Pythagoras Global Investors L.P.

Description: Solios Power, LLC *et al.* submits notice of non material change in status and notice of cancellation of rate schedules.

Filed Date: 08/20/2009.

Accession Number: 20090821–0171.

Comment Date: 5 p.m. Eastern Time on Thursday, September 10, 2009.

Docket Numbers: ER09–1556–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an amended executed Multiparty Facilities Construction Agreement among Barton Windpower *et al.*

Filed Date: 08/21/2009.

Accession Number: 20090824–0027.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1557–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an amended executed Multi-Party Facilities Construction Agreement among Barton Windpower *et al.*

Filed Date: 08/21/2009.

Accession Number: 20090824–0026.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1561–001; ER09–1561–002.

Applicants: Castleton Power, LLC.

Description: Castleton Power, LLC submits an amended notice of succession and notice of non-material change in status.

Filed Date: 08/21/2009.

Accession Number: 20090824–0029.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1608–000.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Company submits FERC Electric Tariff, Original Volume 2, Service Agreement No 11U.

Filed Date: 08/19/2009.

Accession Number: 20090820–0052.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 09, 2009.

Docket Numbers: ER09–1609–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff to update the list of Grandfathered Agreements contained in Attachment W of the SPP Tariff.

Filed Date: 08/19/2009.

Accession Number: 20090820–0051.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 09, 2009.

Docket Numbers: ER09–1610–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a letter agreement with the City of Victorville.

Filed Date: 08/20/2009.

Accession Number: 20090820–0146.

Comment Date: 5 p.m. Eastern Time on Thursday, September 10, 2009.

Docket Numbers: ER09–1611–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits SCLA Development Wholesale Distribution Load Interconnection Facilities Agreement and Service Agreement for Wholesale Distribution Service with the City of Victorville.

Filed Date: 08/20/2009.

Accession Number: 20090820–0147.

Comment Date: 5 p.m. Eastern Time on Thursday, September 10, 2009.

Docket Numbers: ER09–1612–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits Seventh Revised Sheet 9 *et al.* to FERC Electric Tariff, Original Volume 1, to be effective 10/20/09.

Filed Date: 08/20/2009.

Accession Number: 20090821–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, September 10, 2009.

Docket Numbers: ER09–1613–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits Original Service Agreement 271 to FERC Electric Tariff, Second Revised Volume 6.

Filed Date: 08/21/2009.

Accession Number: 20090821–0186.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1614–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits an Interconnection Agreement with Seminole Energy LLC.

Filed Date: 08/21/2009.
Accession Number: 20090821–0183.
Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1615–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits First Revised Rate Schedule FERC 364 reflecting the cancellation of the Amended/Restated Edison-Colton Sylmar Firm Transmission Service Agreement w/City of Colton.
Filed Date: 08/21/2009.
Accession Number: 20090821–0184.
Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1616–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits First Revised Rate Schedule FERC No 27.
Filed Date: 08/21/2009.
Accession Number: 20090821–0185.
Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1617–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits Transmission Interconnection Agreement among the MidAmerican Energy Company, ITC Midwest LLC and Midwest ISO.
Filed Date: 08/21/2009.
Accession Number: 20090824–0030.
Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09–1619–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits its proposed revisions to its Open Access Transmission, Energy and Operating Reserve Market Tariff *etc.*
Filed Date: 08/21/2009.
Accession Number: 20090824–0115.
Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–20995 Filed 8–31–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 20, 2009.

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

Docket Numbers: RP09–880–000.
Applicants: Northern Border Pipeline Company.
Description: Northern Border Pipeline Company submits Sixth Revised Sheet No 202 *et al.* to its FERC Gas Tariff, First Revised Volume No 1.
Filed Date: 08/10/2009.
Accession Number: 20090810–0041.
Comment Date: 5 p.m. Eastern Time on Monday, August 24, 2009.

Docket Numbers: RP09–904–000.
Applicants: Iroquois Gas Transmission Systems, L.P.
Description: Iroquois Gas Transmission System submits Tenth Revised Sheet 8 *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 9/13/09.
Filed Date: 08/14/2009.
Accession Number: 20090817–0063.
Comment Date: 5 p.m. Eastern Time on Wednesday, August 26, 2009.

Docket Numbers: RP09–905–000.
Applicants: Kern River Gas Transmission Company
Description: Kern River Gas Transmission Company submits Original Sheet 494 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 9/20/09.
Filed Date: 08/17/2009.
Accession Number: 20090817–0037.
Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–907–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Forty-Eighth Revised Sheet 5 *et al.* of its FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/09.
Filed Date: 08/19/2009.
Accession Number: 20090819–0641.
Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–908–000.
Applicants: Blue Lake Gas Storage Company.
Description: Blue Lake Gas Storage Company submits Fourteenth Revised Sheet 5 from its FERC Gas Tariff, First Revised Volume 1, to be effective 10/1/09.
Filed Date: 08/19/2009.
Accession Number: 20090819–0708.
Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–909–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Fifty-Second Revised Sheet 17 from its FERC Gas Tariff, Second Revised Volume 1 and Twenty-Third Revised Sheet 14 from its FERC Gas Tariff, Original Volume 2, to be effective 10/1/09.
Filed Date: 08/19/2009.
Accession Number: 20090819–0707.
Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–910–000.
Applicants: ANR Storage Company.
Description: ANR Storage Company submits Fourteenth revised Sheet 5 from

its FERC Gas Tariff, Original Volume 1 and Sixteenth Revised Sheet 1(a) from its FERC Gas Tariff Original Volume 2, to be effective 10/1/09.

Filed Date: 08/19/2009.

Accession Number: 20090819–0709.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–21001 Filed 8–31–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

August 20, 2009.

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

Docket Numbers: RP06–200–056.

Applicants: Rockies Express Pipeline, LLC.

Description: Rockies Express Pipeline, LLC submits Fourth Revised Sheet 8C *et al.* of its FERC Gas tariff, Second Revised Volume 1, to be effective 8/18/09.

Filed Date: 08/18/2009.

Accession Number: 20090818–0043.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–317–002.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Rev Second Rev Sheet No. 3800 *et al.* to its FERC Gas Tariff, Third Revised Volume No. 1.

Filed Date: 08/19/2009.

Accession Number: 20090819–0694.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–812–001.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Company, LLC submits First Revised Sheet No. 17 to its FERC Tariff, Original Revised Volume No. 1.

Filed Date: 08/19/2009.

Accession Number: 20090819–0693.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP09–807–001.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission Company submits Sub. Second Revised Sheet 68.01, to be effective 8/1/09.

Filed Date: 08/18/2009.

Accession Number: 20090818–0042.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis,

Deputy Secretary.

[FR Doc. E9–20999 Filed 8–31–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

August 21, 2009.

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

Docket Numbers: RP06–200–057.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits Seventh Revised Sheet 9 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 8/15/09.

Filed Date: 08/19/2009.

Accession Number: 20090820–0049.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: RP06–200–058.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline, LLC submits Eighth Revised Sheet 9 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 8/19/09.

Filed Date: 08/20/2009.

Accession Number: 20090821–0101.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 01, 2009.

Docket Numbers: RP09–799–001.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company, LLC submits Sub. Seventeenth Revised Sheet 5 to its FERC Gas Tariff, Second Revised Volume 1–A, to be effective 8/1/09.
Filed Date: 08/20/2009.
Accession Number: 20090820–0150.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 01, 2009.

Docket Numbers: RP09–904–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, LP submits a supplement to its 8/14/09 filing to correct errors that has been identified in Original Sheet 141 to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 08/20/2009.
Accession Number: 20090821–0104.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 01, 2009.

Docket Numbers: RP96–312–199.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits a revised Exhibit A to the Gas Transportation Agreement pursuant to Tennessee's Rate Schedule FT–A with Nicor Gas.
Filed Date: 08/20/2009.
Accession Number: 20090821–0103.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 01, 2009.

Docket Numbers: RP96–320–113.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits an amendment to a negotiated rate letter agreement re the East Texas to Mississippi Expansion Project.
Filed Date: 08/20/2009.
Accession Number: 20090821–0102.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 01, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–20998 Filed 8–31–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 19, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–103–000.
Applicants: Dynegy Arlington Valley, LLC, Dynegy Inc., Dynegy Midwest Generation, Inc., Bluegrass Generation Company, LLC, Renaissance Power, LLC, Griffith Energy LLC, Rocky Road Power, LLC, Riverside Generating Company, LLC, Bridgeport Energy, LLC, LS Power Development, LLC, Tilton Energy LLC.
Description: Joint Application for Approval Under Section 203 of the Federal Power Act of LS Power Development, LLC, *et al.*
Filed Date: 08/18/2009.
Accession Number: 20090818–5074.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: EC09–104–000.
Applicants: Lord, Abbett & Co. LLC.
Description: Request for Blanket Authorizations to Acquire and Dispose of Securities Under section 203 of the Federal Power Act.
Filed Date: 08/19/2009.
Accession Number: 20090819–5028.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 09, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–405–001.
Applicants: New York Independent System Operator, Inc.
Description: NYISO's Final Report on Restitution Discussions and Report on Error Notification and Transparency Procedures.
Filed Date: 08/10/2009.
Accession Number: 20090810–5092.
Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER09–1228–001.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits revisions to OATT Formula Transmission Rate to reflect Settlement with Customers.
Filed Date: 08/17/2009.
Accession Number: 20090818–0051.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1248–001.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits the required compliance filing of a proposed attachment FF–MidAmerican Local Transmission Planning Projects to the Midwest ISO ASA Tariff.
Filed Date: 08/17/2009.
Accession Number: 20090818–0053.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1403–001.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Company submits certain tariff revisions to the Restated Power Service Agreement between Wisconsin Electric and WPPI Energy.
Filed Date: 08/18/2009.
Accession Number: 20090819–0626.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1479–000.
Applicants: Kansas Energy LLC.
Description: Petition of Kansas Energy, LLC for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 08/14/2009.
Accession Number: 20090817–0064.
Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09–1599–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits Service Schedule C for inclusion in the Contract for Interchange Service between FPC and Tampa Electric Company dated 7/21/08 as amended.
Filed Date: 08/18/2009.
Accession Number: 20090818–0046.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1600–000.
Applicants: Cleco Power LLC.
Description: Cleco Power LLC submits an amended version of the Network Operating Agreement etc.
Filed Date: 08/18/2009.
Accession Number: 20090818–0045.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1601–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits its Transmission Owner Tariff Cycle 3.
Filed Date: 08/17/2009.
Accession Number: 20090819–0524.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1602–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits Service Schedule C for inclusion in the Agreement for Interchange Service between Tampa Electric and the Utilities Commission, City if New Smyrna Beach dated 10/31/79 as amended.
Filed Date: 08/17/2009.
Accession Number: 20090819–0623.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1603–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits Service Schedule C for inclusion in the Contract for Interchange Service between Tampa Electric dated 7/15/77 as amended.
Filed Date: 08/17/2009.
Accession Number: 20090819–0622.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER09–1604–000.
Applicants: Northern Indiana Public Service Company.
Description: Northern Indiana Public Service Company submits Supplement 30 to NIPSCO Electric Rate Schedule FERC 14, which shows the agreement between NIPSCO and Wabash Power Valley Association, Inc etc.
Filed Date: 08/18/2009.
Accession Number: 20090819–0625.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Docket Numbers: ER94–1188–047; ER06–1046–005; ER98–1279–017; ER98–4540–016; ER99–1623–016.
Applicants: LG&E Energy Marketing Inc.; LG&E Energy Marketing Inc.; Western Kentucky Energy Corporation; Louisville Gas & Electric Company; Kentucky Utilities Company.
Description: E.ON. U.S. informing the Commission of two changes in status with regard to the characteristics that the Commission previously relied upon in granting them market-based rate authority.
Filed Date: 08/17/2009.
Accession Number: 20090818–0052.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–27–003.
Applicants: E.ON. U.S. LLC.
Description: Louisville Gas and Electric Company *et al.* submits a revised Attachment K to the LG&E/KU joint Open Access Transmission Tariff pursuant to FERC's 6/18/09 Order.
Filed Date: 08/17/2009.
Accession Number: 20090818–0033.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 08, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–20997 Filed 8–31–09; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2009–0678; FRL–8951–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Confidentiality Rules (Renewal); EPA ICR No. 1665.09, OMB Control No. 2020–0003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on February 28, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 2, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2009–0678, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oei@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Office of Environmental Information Docket (OEI), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail code: 28221T, Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, 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–OEI–2009–0678. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT:

Larry F. Gottesman, National Freedom of Information Act Officer, Collection Strategies Division, Office of Information Collection, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2162; fax number: 202–566–2147; e-mail address: *gottesman.larry@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2009–0678, or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c) (2) (A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are businesses or other for-profit entities.

Title: Confidentiality Rules (Renewal).

ICR numbers: EPA ICR No. 1665.09, OMB Control No. 2020–0003.

ICR status: This ICR is currently scheduled to expire on February 28, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In the course of administering environmental protection statutes, EPA collects data from thousands of facilities in many sectors of the U.S. economy. In many cases, industry marks the data it submits to EPA as CBI. In addition, businesses submit information to EPA without the Agency requesting the information. EPA established the procedures described in 40 CFR part 2, subparts A and B, to protect the confidentiality of information as well as the rights of the public to obtain access to information under the Freedom of Information Act (FOIA). In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (*e.g.*, in response to a FOIA request or in the course of rulemaking or litigation), or in advance confidentiality determination, it shall notify the effected business and provides an opportunity to comment (*i.e.*, to submit a substantiation of confidentiality claim). This ICR relates to the collection of information that will assist EPA in determining whether previously submitted information is entitled to confidential treatment.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 14 hours to prepare and submit each substantiation or 6,302 hours. In addition, EPA utilizes the services of contractors/subcontractors under the authority of 40 CFR part 2, subpart B, all contractors/subcontractors who may be given access to confidential business information must first sign confidentiality agreements state that they will honor the terms of the contract/subcontract which requires the protection of CBI. The annual total burden for signing and maintaining the agreements would be 130.3 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information. The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1,330.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 6,521 hours.

Estimated total annual costs: $212,185.24. This includes an estimated burden cost of $0 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

No.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a) (1) (iv) to announce the submission of the ICR to OMB and the opportunity to submit comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: August 26, 2009.

John Moses,

Division Director, Collection Strategies Division.

[FR Doc. E9–21120 Filed 8–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0629; FRL–8432–9]

Petition to Revoke Tolerances for 13 Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability and seeking comment on a July 23, 2009 petition from the American Bird Conservancy (ABC), requesting that EPA revoke tolerances established under the Federal Food, Drug and Cosmetic Act (FFDCA), section 408, for uses of 13 pesticides with no associated U.S. registrations. ABC claims that maintaining these tolerances allows Central and South American countries to continue using these pesticides on crops for which the United States has already determined there are unacceptable risks for U.S. protected migratory birds.

DATES: Comments must be received on or before November 2, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0629, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0629. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Richard P. Dumas, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; fax number: (703) 308–8005; e-mail address: *dumas.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, including environmental and agricultural advocates; the chemical industry; pesticide users; and foreign governments.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. Since others also may interested, the Agency has not attempted to describe all specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **FEDERAL REGISTER** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA requests public comment during the next 60 days on a petition available under docket ID number EPA–HQ–OPP–2009–0629, received from the ABC. The petition requests that EPA revoke tolerances established under section 408 of the FFDCA for uses of 13 pesticides with no associated U.S. registrations. ABC claims that maintaining these tolerances allows Central and South American countries to continue using these pesticides on crops for which the United States has already determined there are unacceptable risks for U.S. protected migratory birds.

The Specific 13 Tolerances Requested for Revocation are:

Pesticide	Tolerance Requested for Revocation	CFR Citation
Cadusafos	Banana	40 CFR 180.461
Cyproconazole	Coffee, bean, green (imported)	40 CFR 180.485
Diazinon	Kiwifruit	40 CFR 180.153
Dithianon	Fruit, pome, group 11 Hop, dried cones	40 CFR 180.621
Diquat	Banana Coffee, bean, green	40 CFR 180.226
Dimethoate	Blueberry	40 CFR 180.204
Fenamiphos	Banana Fruit, citrus, group 10 Garlic Grape Pineapple	40 CFR 180.349
Mevinphos	Broccoli Cabbage Cauliflower Celery Cucumber Grape Lettuce Melon Pea Pepper Spinach Squash, summer Strawberry Tomato Watermelon	40 CFR 180.157

Pesticide	Tolerance Requested for Revocation	CFR Citation
Methomyl	Hop, dried cones	40 CFR 180.253
Naled	Cucumber Lettuce Tomato Pumpkin Squash, winter Turnip, tops	40 CFR 180.215
Phorate	Coffee, bean, green	40 CFR 180.206
Terbufos	Coffee, bean, green	40 CFR 180.352
Dichlorvos	Tomato	40 CFR 180.235

ABC also asserts that should EPA believe that tolerances for import purposes are necessary, it must consult with the U.S. Fish and Wildlife Service to retain the tolerances listed above to ''identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations...'' and ''develop and use principles, standards and practices that will lessen the amount of unintentional take...''

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 24, 2009.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–21124 Filed 8–31–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL –8951–6]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Cape Charles, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Acting Regional Administrator of EPA Region III is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Cape Charles for the purchase of membrane filtrations cassettes, which are an integral component of the Membrane Bioreactor (MBR) wastewater treatment process, at its Wastewater Treatment Plant (WWTP). Cape Charles indicates that the MBR treatment process is necessary to achieve the wastewater treatment levels required by the National Pollutant Discharge Elimination System (NPDES) permits issued for this WWTP. The membrane filtration equipment under consideration is manufactured by a company located in Canada and no United States manufacturer produces an alternative that meets Cape Charles's technical specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Acting Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance. Cape Charles has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of membrane filtration cassettes for the proposed project being implemented by Cape Charles.

DATES: *Effective Date:* August 19, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Chominski, Deputy Associate Director, (215) 814–2162, or David McAdams, Environmental Engineer, (215) 814–5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111–5, Buy American requirements to the Town of Cape Charles for the acquisition of membrane filtration cassettes manufactured by GE Water and Process Technologies located in Canada. Cape Charles has been unable to find an American made membrane filtration cassette manufacturer to meet its specific wastewater requirements.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Cape Charles's waiver request is to allow the purchase of three membrane filtration cassettes for use in improvements to its existing WWTP. This project will upgrade its existing WWTP by adding a new MBR treatment process. The membrane filtration cassette is an integral component of the MBR treatment process because it separates the treated wastewater from the mixed liquor which comes from the biological reactors, before the treated wastewater is disinfected and discharged. After an engineering analysis of alternate treatment processes, Cape Charles determined MBR to be the most environmentally

sound and cost effective solution. The MBR is an advance waste water treatment process which is designed to meet the high quality effluent requirements of the waste load allocation under the NPDES permit. In addition, in anticipation of procuring the MBR system, Cape Charles has already incorporated specific technical design requirements for installation of membrane filter cassettes with the MBR treatment process at their WWTP, including specific tankage footprint, geometry and configuration. To require Cape Charles to redesign its project would cause an unacceptable delay to the initiation of construction.

Cape Charles has provided information to the EPA demonstrating that there are no membrane filtration cassettes manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. Cape Charles surveyed forty membrane manufacturers as part of its market research to locate domestic manufacturers of membrane filtration cassettes for WWTPs. It was unable to locate any domestic manufacturers. Most were unacceptable because their membrane products were not designed for domestic wastewater treatment plants. The remaining manufacturers either manufacture membrane materials without providing a package system similar to the system specified or were foreign manufacturers.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'', defines reasonably available quantity as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' Cape Charles has incorporated specific technical design requirements for installation of membrane filtration cassettes at its WWTP.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring communities, such as Cape Charles, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

Based on additional research conducted by EPA's Office of Infrastructure and Assistance (OIA) in Region III, and to the best of the Region's knowledge at the time of review, there do not appear to be other membrane filtration cassettes manufactured domestically that would meet Cape Charles's technical specification. EPA's national contractor prepared a technical assessment report dated July 13, 2009 based on the waiver request submitted. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant's claim that there are no American-made membrane filtration cassettes for use in MBRs in WWTPs.

The OIA has reviewed this waiver request and to the best of our knowledge at the time of review has determined that the supporting documentation provided by Cape Charles is sufficient to meet the criteria listed under Section 1605(b) and in the April 28, 2009, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' Memorandum:'' Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Cape Charles's technical specifications, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Town of Cape Charles is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of three membrane filtration cassettes using ARRA funds as specified in Cape Charles's request of July 8, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Issued on: August 19, 2009.

William C. Early,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. E9–21123 Filed 8–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2009–0643, FRL–8951–8]

Vertut Blending and Packaging Superfund Site, Memphis, Shelby County, TN; Notice of settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Vertut Blending and Packaging Superfund Site located in Memphis, Shelby County, Tennessee for publication.

DATES: The Agency will consider public comments on the settlement until October 1, 2009. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2009–0643 or Site name Vertut Blending and Packaging Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: August 17, 2009.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E9–21122 Filed 8–31–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

August 26, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on November 2, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street S.W., Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations, FCC Form 308.

Form No.: FCC Form 308.

Type of Review: New information collection.

Respondents: Business or other for–profit entities.

Number of Respondents/Responses: 22 respondents; 22 responses.

Estimated Time Per Response: 1 hour.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 325(c) of the Communications Act of 1934, as amended.

Total Annual Burden: 22 hours.

Annual Cost Burden: $10,890.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (''Commission'') is requesting that the Office of Management and Budget (OMB) approve the establishment of a new information collection titled, ''Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308).'' Applicants use the FCC Form 308 to apply, under Section 325(c) of the Communications Act of 1934, as amended, for authority to locate, use, or maintain a studio in the United States for the purpose of supplying program material to a foreign radio or TV broadcast station whose signals are consistently received in the United States, or for extension of existing authority.

Currently, the FCC Form 308 is only available to the public in paper form. The Commission is requesting OMB approval of a revised FCC Form 308, in Excel format, that will be made available to the public on the FCC Forms page of the FCC's website, www.fcc.gov <http://www.fcc.gov/>. The form was revised to make it more user friendly and to include questions to obtain only the legal and technical information that is essential to grant authority to U.S. broadcasters to supply program material to a foreign radio or TV broadcast station whose signals are consistently received in the U.S. or to extend the current authority. After the applicant completes the form, it is mailed to the U.S. Bank along with the application fee. Then, it is forwarded to the International Bureau with the exception of fee exempt applications which are filed directly with the FCC Secretary's Office and then forwarded to the Bureau.

Without this collection of information, the Commission would not be able to ascertain whether the main studio owner in the US meets various legal requirements or the foreign broadcast facility, which receives and retransmits programming from the main studio in the US, meets various technical requirements that prevent harmful interference to other broadcast stations or telecommunications facilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–21014 Filed 8–31–09; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL TRADE COMMISSION

[Docket No. 9336]

Dyna-E International, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before September 25, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Dyna-E, Inc., Docket No. 9336'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any

sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other 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. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-DynaE*) and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-DynaE*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Dyna-E, Inc., Docket No. 9336'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Michael J. Davis, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2458.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 26, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/actions.shtm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Dyna-E International, Inc., a corporation, and its president and director, George Wheeler (''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondents' marketing and sale of Lightload Towels with packaging and other marketing materials that prominently state ''biodegradable'' without qualification. According to the FTC complaint, respondents represented that Lightload Towels will completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time after customary disposal. The complaint alleges respondents' biodegradable claim is false because a substantial majority of total household waste is disposed of either in landfills, incinerators, or recycling facilities and these customary disposal methods do not present conditions that would allow for Lightload Towels to completely break down and return to nature, *i.e.*, decompose into elements found in nature, within a reasonably short period of time. The complaint further alleges that respondents failed to have substantiation for their biodegradable claim. The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I.A of the proposed order prohibits respondents from making a representation that any product is degradable unless the representation is true, not misleading, and substantiated by competent and reliable scientific evidence. Part I.B prohibits respondents from making any other environmental benefit claim about any product, unless at the time the representation is made, it is truthful and not misleading, and substantiated by competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Parts II through VI require respondents to keep copies of relevant advertisements and materials

[1]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in residence, employment, or business affiliation; to file compliance reports with the Commission; and to respond to other requests from FTC staff. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. E9–20976 Filed 8–31–09: 2:25 pm]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding 340B Drug Pricing Program—Children's Hospitals

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final notice.

SUMMARY: Section 340B of the Public Health Service Act (section 340B) and section 1927(a) of the Social Security Act (section 1927(a)) implement a drug pricing program in which manufacturers who sell covered outpatient drugs to covered entities must agree to charge a price that will not exceed an amount determined under a statutory formula. Section 6004 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (section 6004) added certain qualifying children's hospitals to the list of covered entities eligible to access 340B discounted drugs. The purpose of this notice is to inform interested parties of final guidelines regarding the addition of children's hospitals that meet certain requirements, specifically: (1) The process for the registration of children's hospitals to the 340B Program; and (2) the obligation of manufacturers to provide the statutorily mandated discount to those children's hospitals.

FOR FURTHER INFORMATION CONTACT: Mr. Jimmy Mitchell, Director, Office of Pharmacy Affairs (OPA), Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Parklawn Building, Room 10C–03, Rockville, MD 20857, or by telephone through the Pharmacy Services Support Center at 1–800–628–6297.

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

SUPPLEMENTARY INFORMATION:

(A) Background

Proposed guidelines for children's hospitals were announced in the **Federal Register** at 72 FR 37250 on July 9, 2007. A comment period of 60 days was established to allow interested parties to submit comments. HRSA, HSB, acting through the OPA, received 20 comments concerning the proposal.

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, established section 340B of the Public Health Service Act and added certain implementation provisions for the 340B Program to section 1927(a) of the Social Security Act. Section 340B contains the majority of the requirements for covered entities participating in the 340B Program, while the relevant provisions of section 1927(a) of the Social Security Act provide primarily for the requirement that manufacturers provide the statutorily mandated discount to covered entities.

Section 340B contains a list of covered entities that are eligible to receive discounts through the 340B Program. The list includes entities such as Federally Qualified Health Centers, State-operated AIDS drug purchasing assistance programs, and certain disproportionate share hospitals. Children's hospitals were not included as covered entities under section 340B in the Veterans Health Care Act of 1992 as enacted.

Section 6004 of the Deficit Reduction Act (DRA), Pub. L. 109–171, added certain qualifying children's hospitals as covered entities eligible to access 340B discounted drugs. Section 6004 did not amend section 340B (which contains many of the requirements for covered entities), however, the DRA provision amended section 1927(a) of the Social Security Act (which primarily contains requirements for manufacturers' participation) to add children's hospitals to the 340B Program.

To be eligible for the 340B Drug Pricing Program, section 1927(a), as amended by section 6004 of the DRA, requires children's hospitals to meet the requirements of clauses (i) and (iii) of section 340B(a)(4)(L) of the Public Health Service Act, which contain provisions for State or local government affiliations and non-participation in group purchasing organizations. In addition, children's hospitals must meet the requirements of clause (ii) of such section, which contains requirements for the provision of indigent care, if such section ''were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance'' under Medicaid.

We received several comments in support of the proposal. Supporting comments agreed with the proposed guidelines and that section 6004 of the DRA brings eligible children's hospitals into the 340B program. Several commenters agreed with requiring children's hospitals to demonstrate their status as defined by the Social Security Act section 1886(d)(1)(B)(iii) and to obtain a Medicare provider number in the 3300 series. Many comments supported obtaining an independent audit to certify eligibility requirements and to help ensure program integrity. Comments supported HRSA's position that current Pharmaceutical Pricing Agreements (PPAs) are already broad enough to include children's hospitals as covered entities.

Additional comments challenged HRSA's legal authority and compliance with the Administrative Procedure Act as well as contractual authority with existing PPAs. Other comments raised issues of retroactive discounts, prevention of duplicate discounts, and alternative eligibility criteria such as using disproportionate patient percentages and independent audits. All comments discussed the potential impacts on covered entities, patients, and manufacturers.

The following section presents a summary of all major comments, grouped by subject, and a response to each comment. All comments were considered in developing this final notice and changes were made to content when appropriate.

(B) Comments and Responses

(1) HRSA's Legal Authority

Comment: HRSA lacks authority to add children's hospitals to the 340B program through guidelines.

Response: HRSA disagrees. The Department publishes guidelines in the **Federal Register** providing a public comment period to obtain input into guidance development. Congress did not prescribe the process by which children's hospitals would be added into the 340B program. HRSA has authority to provide guidelines interpreting the statute and its intended administration of the 340B program. The guidelines are not subject to the

Administrative Procedure Act's notice and comment requirements; however, the Department chose to solicit and respond to public comments. These guidelines help to fulfill the Secretary's obligation to provide for the operation of the program under section 340B.

Comment: It is unclear that Congress has authorized the Secretary to enter into PPAs that include children's hospitals. Contractual obligations of the PPA are directly tied to section 340B, which has not been amended to include children's hospitals as covered entities.

Response: HRSA acknowledges that section 6004 of the DRA did not amend section 340B to include children's hospitals as covered entities. However, Congress did add children's hospitals to the 340B program by amending section 1927(a) of the Social Security Act which requires that manufacturers provide the statutorily mandated discount to covered entities. Congress specifically defined the term covered entity as including certain qualifying children's hospitals. Considering the statutory scheme as a whole, it is clear that the Secretary has been authorized to include children's hospitals within the program.

Comment: Since the appropriate legislative changes were not made, it is out of the scope of authority of the Secretary and HRSA to read the current PPA as including children's hospitals.

Response: The existing PPAs do not need to be amended to include children's hospitals. The PPAs require manufacturers to extend 340B pricing to all covered entities listed by HRSA in its database. The PPA also requires that it be interpreted in a manner that best effectuates the underlying statutory scheme. As previously discussed, including children's hospitals as covered entities for purposes of the PPA best effectuates the statutory scheme and therefore children's hospitals are covered entities for purposes of the PPA.

(2) Certification of Eligibility

Comment: Clarify the Social Security Act definition of children's hospitals to mean that in any fiscal year or calendar year, no less than 80 percent of patient days involve patients under 18 years of age.

Response: We disagree with a suggestion that HRSA utilize an 80 percent figure. It is unclear on what basis such a figure would be determined. The statute indicates that section 1886(d)(1)(B)(iii) of the Social Security Act defines the term children's hospital for purposes of 340B eligibility. This section defines a children's hospital as ''a hospital whose inpatients are predominantly individuals under 18 years of age.'' In using the statutory definition, HRSA has taken into account the CMS interpretation of this provision and the context of the 340B Drug Pricing Program.

Comment: The guidelines should require participating children's hospitals to demonstrate that the entity is a children's hospital as defined by the Social Security Act and obtain a Medicare provider number in the 3300 series identifying it as a children's hospital.

Response: We agree. The statute defines ''children's hospitals'' by reference to section 1886(d)(1)(B)(iii) of the Social Security Act. CMS has reserved the 3300 series of Medicare Provider Numbers for children's hospitals that meet the statutory definition. The guidelines have been changed accordingly to make this clearer.

Comment: Clarify how the disproportionate share adjustment percentage eligibility criteria can be applied to children's hospitals since children's hospitals do not receive Medicare disproportionate share hospital (DSH) payment adjustments. Children's hospitals should be permitted to rely on its disproportionate patient percentage (DPP) as defined by CMS for purposes of Medicaid. The DPP formula demonstrating a percentage of greater than 27.32 percent is just as reliable as the required greater than 11.75 percent disproportionate share adjustment percentage.

Response: HRSA agrees with the comment that children's hospitals that do not receive Medicare DSH payment adjustments may have difficulty in showing their disproportionate share adjustment percentage. As an alternative, children's hospitals can show compliance with this requirement if they provide independent verification that if the disproportionate share adjustment percentage were calculated, it would be greater than 11.75 percent. Under current law, one method for reaching such a conclusion would be to have a DPP greater than a threshold amount that equates to a disproportionate share adjustment percentage greater than 11.75 percent. DPP for this purpose is defined at 42 CFR 412.106 and is used in the current applicable statutory formula to calculate the disproportionate share adjustment percentage for DSHs.

Comment: Many children's hospitals do not file any or full Medicare cost reports. If no cost report exists, children's hospitals should be permitted to rely on their own independent auditors to confirm their DPP.

Response: If a children's hospital does not file a Medicare cost report, HRSA agrees that children's hospitals can confirm eligibility through the findings of an independent auditor and certification by the covered entity as to the appropriate value of the hospital's disproportionate share adjustment percentage, as based upon the DPP.

Comment: In addition to requiring verification from independent auditors from children's hospitals that the entity meets 340B eligibility requirements, a comment was made to require this verification to OPA annually because the data used in the calculation to meet the requirements of section 340B(a)(4)(L)(ii) are subject to change.

Response: HRSA agrees that there is a need for ongoing verification as to whether this eligibility requirement continues to be met over time. After enrollment, children's hospitals, as do all covered entities, have an ongoing responsibility to immediately notify the OPA in the event of any change in eligibility for the 340B Drug Pricing Program. No less than on an annual basis, children's hospitals will need to demonstrate that the children's hospital continues to have the required disproportionate share adjustment percentage or DPP. The OPA will provide additional guidance as it develops its plans to annually certify covered entities. To the extent that the OPA is able to obtain periodic documentation of data similar to that provided by CMS with respect to DSHs, it may notify the covered entity that information need not be provided.

(3) Eligibility for Rebates Back to February 8, 2006

Comment: The eligibility criteria for receiving retroactive discounts are overwhelming and confusing to both manufacturers and covered entities. HRSA should remove the ability to receive retroactive discounts from the final rule or, at a minimum, clearly define these criteria.

Response: Although the statute can be complex, we disagree that it is overwhelming or that unilaterally disallowing any ''retroactive'' discounts is appropriate. The parties are in the best position to understand and resolve claims over these issues. In this guidance, HRSA believes it has provided an appropriate level of detail as to its view on how covered entities can qualify for rebates on purchase back to February 8, 2006, the date of enactment of the DRA.

Comment: HRSA should post on its on-line database the date when a children's hospital satisfied the 340B eligibility criteria for manufacturers to

verify if and when the children's hospital was entitled to receive retroactive discounts.

Response: HRSA does not currently plan to provide the eligibility date on its Web site for purposes of retroactive rebates. HRSA intends to follow the current practice of listing the date of eligibility for direct purchase under the 340B Drug Pricing Program as is consistent with the purpose of that database. The addition of retroactivity dates would be outside the established purpose of the database and lead to potential confusion. If a covered entity and manufacturer are unable to agree on the date that the covered entity complied with program requirements or otherwise disagree, HRSA believes that it is most appropriate to follow its published dispute procedures that require the parties to resolve any disputes in good faith. HRSA's first priority is to have eligible children's hospitals register for the 340B Drug Pricing Program. HRSA has concluded that this approach is the most efficient and that HRSA will assist parties to resolve disputes through the published dispute resolution process to the extent resources permit.

Comment: HRSA should clarify ''appropriate'' documentation to demonstrate that drugs did not generate Medicaid rebates.

Response: This is a fact-specific inquiry that may vary from case to case and State to State. The children's hospital should demonstrate that the covered outpatient drugs for which it seeks retroactive discounts were not subject to Medicaid rebates because they were not billed to Medicaid or it can otherwise show the State did not seek a rebate on the drugs for which a retroactive claim is sought.

Comment: Children's hospitals lack access to Medicaid drug rebate invoices/claims data needed to establish the requirement that covered outpatient drugs did not generate Medicaid rebates during retroactive periods.

Response: HRSA believes it appropriate to require that children's hospitals seeking refunds provide sufficient factual evidence to demonstrate compliance with statutory requirements. Children's hospitals seeking retroactive discounts should have access to records of which drugs were billed to Medicaid and which drugs were not billed to Medicaid. HRSA suggests that children's hospitals consider contacting State Medicaid agencies for supporting documentation as is appropriate.

Comment: HRSA should coordinate with CMS to provide guidance regarding monthly Average Manufacturer Price (AMP) and quarterly Average Sales Price (ASP) calculations already submitted, if retroactive discounts are given.

Response: HRSA will do what it reasonably can to assist in the process; however, the issue of resolving whether retroactive discounts are appropriate should be resolved to the full extent possible by the covered entities and manufacturers. Manufacturers will need to consult with CMS with respect to the separate issue on how to handle calculations reported to CMS.

Comment: Children's hospitals should not be penalized for use of Group Purchasing Organizations (GPOs) during the long interval that has elapsed since enactment of section 6004. Initially, HRSA allowed DSHs to use GPOs and to receive 340B retroactive discounts as long as discounts were not for drugs obtained through the GPO. Similarly, children's hospitals should be eligible to receive retroactive discounts for covered outpatient drugs that were not purchased through a GPO.

Response: HRSA disagrees and finds the proposed treatment of retroactive rebates to be inconsistent with the applicable standards for DSHs. The statute makes clear that children's hospitals must meet the same criteria applicable to DSHs. In 1994, final guidance was published on the GPO exclusion that expressly provides that any participation in a GPO or other group purchasing arrangement for covered outpatient drugs by a DSH results in loss of eligibility as a covered entity. HRSA believes that under the statute and under current guidance it should exclude from eligibility for retroactive rebates any purchases while the children's hospital purchased covered outpatient drugs through a GPO or other purchasing arrangement.

The guideline for retroactive rebates published in 1994 (59 FR 25110) was consistent with the GPO exclusion guideline in place for the period of retroactivity. Likewise, this guideline for retroactive rebates is consistent with the GPO exclusion guideline in place for the period of retroactivity.

Comment: Retroactive discounts should only apply to children's hospitals that comply with statutory prohibition against use of a GPO. Furthermore, a comment was received stating that children's hospital should not be able to request retroactive rebates on a covered outpatient drug that was not purchased under a GPO contract if the entity used a GPO contract for other covered outpatient drugs during that same time period.

Response: HRSA agrees and has changed the guidelines to make this issue clear.

Comment: HRSA should be required to establish a process to document the eligibility and compliance of these new entities for any time period of eligibility, including retroactive periods. HRSA should create an audit or certification process to determine the actual date that the facility met all requirements. Manufacturers should be allowed to audit the processes and documentation before they are obligated to provide the retroactive discounts.

Response: HRSA believes that the process outlined in the guidelines provides enough safeguards to ensure program integrity. To the extent that a manufacturer has a specific concern about a covered entity's status, the manufacturer should bring those concerns to HRSA's attention. Manufacturers also have the option of bringing a dispute through the dispute resolution process as addressed in previous guidance (61 FR 65406). The issue of manufacturer audits has also been previously addressed in finalized guidance (61 FR 65406).

Comment: HRSA should shorten the proposed 120-day period allowed to submit requests for retroactive discounts to 30 days, similar to its **Federal Register** notice dated May 13, 1994, following the enactment of section 340B in 1992, where HRSA permitted eligible covered entities to request retroactive discounts within 30 days of publication of guidelines.

Response: While HRSA understands that after enactment of the 340B statute and the implementation of the initial guidances, there was only a 30-day retroactivity period, there are materially different circumstances between the situations in 1994 and today. HRSA must take into account the potential time necessary to obtain sufficient evidence to demonstrate eligibility (requirements which did not exist in 1994) as well as the delay between the time of application to the 340B Drug Pricing Program and listing in the Covered Entity Database at the beginning of the quarter. Upon further review, taking into account changes to this final guidance, HRSA has determined that in order to ensure that all eligible hospitals have reasonable time they should have three full calendar quarters after publication during which they must get registered and officially listed on the 340B Covered Entity Database. To be eligible a children's hospital must register and be listed on 340B Covered Entity Database within one year of publication of this notice. This amount of time will

ensure that all eligible children's hospitals will have reasonable time to obtain the necessary documentation, enroll, and be listed on the 340B Drug Pricing Program Database as eligible to purchase under 340B. Children's hospitals will need to abide by all applicable deadlines for registration and will only be added to the list at the time of standard quarterly updates. Once listed on the 340B Drug Pricing Program Database, a children's hospital will have 30 days to notify manufacturers in writing to preserve their claims.

(4) Eligibility of Off-site Facilities of Children's Hospitals

Comment: HRSA did not address how off-site locations of children's hospitals may participate in 340B. The DSH requirement states that the off-site location be an ''integral'' part of the hospital and be reimbursable on the Medicare cost report. HRSA should be partially guided by Medicare provider-based standards to establish an alternative to the cost report for off-site facilities of children's hospitals to be eligible for 340B.

Response: To the extent possible, eligibility for off-site locations will be determined through the same method applied for DSHs in the 340B Program. Additional clarification on this issue has been provided in the final guidance.

(5) Hemophilia Treatment Centers

Comment: Several commenters asked that HRSA require, as prerequisite, that children's hospitals agree to maintain Hemophilia Treatment Centers as independent purchasers under 340B.

Response: HRSA does not find that such a requirement is necessary to ensure against duplicate discounts or diversion, and does not find sufficient basis to issue such a requirement in this guidance.

(6) Miscellaneous Comments

Comment: There should be a dispute resolution process if a manufacturer has reason to believe that HRSA's determination of eligibility period for a children's hospital is incorrect.

Response: HRSA is not initially making such a determination. HRSA does have guidance on its dispute resolution process.

Comment: HRSA should require explicitly that children's hospitals abide by program guidance relating to the patient definition.

Response: HRSA agrees and finds that the guidance as proposed already makes that explicit.

(C) Obligation of Manufacturers To Provide 340B Discounts to Children's Hospitals

Section 1927(a)(5)(A) of the Social Security Act requires manufacturers to enter into agreements with the Secretary that meet the requirements of section 340B with respect to covered outpatient drugs purchased by a covered entity. Section 1927(a)(5)(B), as amended by section 6004, defines covered entities for purposes of section 1927(a)(5) as those covered entities listed in the Public Health Service Act and certain children's hospitals. As section 1927(a)(5)(A) requires manufacturers to enter into agreements ''with respect to covered outpatient drugs purchased by a covered entity,'' and covered entity is defined as including children's hospitals for purposes of section 1927, manufacturers are required to extend 340B pricing to eligible children's hospitals.

The PPAs between the Secretary and each manufacturer require manufacturers to provide 340B discounted covered outpatient drugs to covered entities. Given the clear congressional intent in section 6004 to expand the category of covered entities, the PPAs currently in place effectively require manufacturers to provide 340B discounts to children's hospitals without need for further amendment to currently existing PPAs.

(D) Process for Admission of Children's Hospitals to the 340B Program

(1) Children's Hospitals Participation

Children's hospitals participation in the 340B Drug Pricing Program is voluntary. Consistent with the participation of other covered entities, once a children's hospital has elected to participate in the program, it must wait to enter or withdraw from the program until the next official update of the 340B covered entity database. Participating children's hospitals must comply with all program guidelines for covered entities until the date they are removed from the 340B covered entity database. The OPA will accept applications from children's hospitals for entry into the 340B Program as of the date of publication of the final notice of these guidelines. Hospitals that submitted documentation seeking recognition as a children's hospital eligible for the 340B Drug Pricing Program prior to the publication of the guidance should apply again in accordance with the procedures described in this guidance.

(2) Certification by Children's Hospitals Prior to 340B Drug Pricing Program Entry

As with other covered entities, prior to entry into the 340B Drug Pricing Program, children's hospitals will be required to provide OPA with a certification regarding several different program requirements. As a threshold matter, a hospital wishing to qualify for the 340B Program as a children's hospital must demonstrate that the hospital is a ''children's hospital'' as defined by section 6004. Section 6004 requires that a hospital wishing to qualify as a children's hospital covered entity must satisfy the definition of ''children's hospital'' contained in section 1886(d)(1)(B)(iii) of the Social Security Act; and meet minimum requirements for the receipt of an additional payment under Medicare pursuant to section 1886(d)(5)(F)(i) of the Social Security Act (if such clause were applied to the children's hospital while taking into account the percentage of care provided by the hospital to Medicaid patients).

(i) Certify That the Hospital Is a Children's Hospital as Defined by Statute

Given the reliance of section 6004 on Medicare payment provisions for the definition of ''children's hospital'' and the requirement that a children's hospital must demonstrate that they would meet the same requirements as a DSH, if they were eligible for DSH payments, a hospital will need to demonstrate that it has been assigned a Medicare provider number identifying the hospital as a ''children's hospital'' (*i.e.,* a hospital with a 3300 series Medicare provider number).

(ii) Certify That the Hospital Will Abide by All Requirements of Section 340B of the Public Health Service Act

Prior to entry into the 340B Program, a children's hospital must certify that it will abide by all the requirements of section 340B that all other covered entities abide by (*e.g.,* prohibition on resale of covered outpatient drugs; prohibition on duplicate discounts or rebates). While children's hospitals are not explicitly mentioned in section 340B, it is implicit in section 1927(a) of the Social Security Act that children's hospitals abide by the requirements of section 340B. Section 1927(a) provides that manufacturers must have entered into agreements with the Secretary that meet the requirements of section 340B and several of the provisions contained in these agreements concern covered entities' compliance with provisions of

section 340B. Furthermore, it is within the Secretary's authority under section 340B to create guidelines necessary for the implementation of the program. Unless children's hospitals are subject to all of the same rules as other covered entities, the inclusion of children's hospitals in the 340B Program would be difficult, if not impossible.

(iii) Certify Compliance With 340B(a)(4)(L) as Modified by Section 6004 of the DRA

Prior to entry into the 340B Program, a children's hospital must certify compliance (along with the date of compliance) with clauses (i), (ii), and (iii) of section 340B(a)(4)(L) (in accordance with section 1927(a)(5)(B) of the Social Security Act) in the following manner:

(A) Meets the requirements of section 340B(a)(4)(L)(i).

To comply with the requirements of section 340B(a)(4)(L)(i), a children's hospital will have to certify (and include such supporting documentation as requested by OPA) that the hospital is (1) owned or operated by a unit of State or local government; (2) is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government; or (3) is a private non-profit hospital under contract with State or local government to provide health care services to low income individuals who are not eligible for Medicare or Medicaid.

(B) Meets the requirements of section 340B(a)(4)(L)(ii).

To comply with section 340B(a)(4)(L)(ii), as modified by section 6004, a children's hospital will have to certify (and include such supporting documentation as requested by OPA) that the children's hospital (1) is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to Medicare), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources and Medicaid exceed 30 percent of its total of such net inpatient care revenues during the period; or (2) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) greater than 11.75 percent.

Supporting documentation must include a signed statement by an appropriate official (*e.g.*, Chief Financial Officer) of the children's hospital that he/she is familiar with the requirements under section 340B(a)(4)(L)(ii), has examined the documentation, and certifies that to the best of his/her knowledge that the children's hospital satisfies the requirements. In addition, the documentation must include: (1) An official document from the Department of Health and Human Services (HHS) or a HHS contractor that is authorized to make official determinations, showing that the children's hospital meets one or both criterion listed above; (2) if the organization files a Medicare cost report, the report filed does not contain a disproportionate share adjustment percentage, and the report includes sufficient information to calculate the disproportionate share adjustment percentage, include a copy of those pages of the filed Medicare cost report with the data necessary to calculate the disproportionate share adjustment percentage; or (3) if the organization does not file a Medicare cost report with sufficient information to calculate the disproportionate share adjustment percentage, a statement from a qualified independent auditor certifying that the auditor performed an audit on the records of the children's hospital, that the auditor is familiar with Federal rules and regulations relevant to its findings, and found that the hospital would meet one or both of the criterion in section 340B(a)(4)(L)(ii), as modified by section 6004 (described in the previous paragraph). The supporting documentation for (1), (2) or (3) should identify the basis for that conclusion including the actual percentage value upon which the determination is made (*e.g.*, disproportionate patient percentage defined at 42 CFR section 412.106), a concise description of any mathematical calculations, and the quarter for which the determination was made. The children's hospital should notify OPA if (1), (2) or (3) result in different conclusions as to eligibility of the children's hospital.

(C) Meets the requirements of section 340B(a)(4)(L)(iii).

To comply with section 340B(a)(4)(L)(iii), a children's hospital will have to certify that it will not participate in a group purchasing organization (GPO) or group purchasing arrangement for covered outpatient drugs as of the effective date of participation as listed in the 340B covered entity database.

(3) Inclusion of Children's Hospitals' Off-Site Outpatient Facilities

Children's hospitals must meet the applicable requirements for DSHs as described in the guidance published in 59 FR 47884 (Sept. 19, 1994).

(i) Children's Hospitals That File Medicare Cost Reports With CMS

Children's hospitals that file Medicare cost reports will be required to utilize the same process to add outpatient facilities as DSHs (59 FR 47884). A children's hospital, eligible for the 340B Drug Pricing Program, must first request that the OPA include in its covered entity database the outpatient facilities that are included as reimbursable in its Medicare cost report. A list of these outpatient facilities along with Medicare and Medicaid billing status information must be included with the request. Second, an appropriate official (*e.g.,* Chief Financial Officer) of the children's hospital must sign a statement that he/she is familiar with CMS guidelines concerning Medicare certification of hospital components as one cost center, has examined the list of outpatient facilities, and certifies that the facilities are correctly included on the Medicare cost report of the children's hospital. When these outpatient facilities are added to the master list of eligible and participating covered entities, the off-site facilities will be able to access 340B Drug Program pricing. Outpatient facilities that are not included as reimbursable on the Medicare cost report or file independent Medicare cost reports will not be eligible for 340B pricing as part of the children's hospital.

(ii) Children's Hospitals That Do Not File Medicare Cost Reports With CMS

Children's hospitals that do not file a Medicare cost report with CMS must first request that the OPA include in its covered entity database the outpatient facilities that are integral parts of the hospital. A list of these outpatient facilities along with Medicaid billing status information must be included with the request. Second, an appropriate official (*e.g.,* Chief Financial Officer) of the children's hospital must sign a statement that he/she is familiar with CMS guidelines concerning Medicare certification of hospitals as a cost center, has examined the list of outpatient facilities, and certifies that each facility is an integral part of the children's hospital whose patients are considered patients of the children's hospital, according to the most current published guidelines on patient definition, and would have been correctly included on the Medicare cost report if the hospital filed such a report and that the outpatient facility meets the requirements of a provider-based facility within a DSH under 42 CFR 413.65.

(E) Annual Re-Certification by Children's Hospitals To Maintain Eligibility Status in 340B Drug Pricing Program

Children's hospitals have an ongoing responsibility to immediately notify OPA in the event of any change in eligibility for the 340B Drug Pricing Program. No less than on an annual basis, children's hospitals will need to demonstrate continued maintenance of the required disproportionate share adjustment percentage or disproportionate patient percentage. OPA will provide additional guidance as it gains experience and develops its plans to annually certify covered entities. To the extent that OPA is able to obtain periodic documentation of such data similar to that provided by CMS with respect to DSHs, it may notify the covered entity that such information need not be provided.

(F) Eligibility for Discounts Back to February 8, 2006

Section 6004 of the DRA indicates that the amendment authorizing entry of children's hospitals into the 340B Program ''shall apply to drugs purchased on or after the date of the enactment of this Act.'' The DRA provision was enacted on February 8, 2006. Therefore, once children's hospitals are admitted to the 340B Program and listed on the Covered Entity Database, they are eligible for 340B drug pricing back to February 8, 2006. However, a children's hospital will be eligible for such retroactive discounts only to the extent that it has satisfied all requirements for participation in the 340B program back to the date discounts are requested.

Children's hospitals may request retroactive discounts (discounts, rebates, or account credit) directly from pharmaceutical manufacturers for covered outpatient drugs when all the following conditions are satisfied:

(1) The children's hospital is listed on the 340B Covered Entity Database as eligible to purchase under 340B within one year of publication of this notice.

(2) The children's hospital sent a request in writing to each manufacturer of the drug(s) for which retroactive discounts are sought within 30 days of the children's hospital having been listed as eligible to purchase under 340B on the 340B Covered Entity Database;

(3) The covered outpatient drugs must have been purchased on or after February 8, 2006;

(4) The covered outpatient drugs must not have generated Medicaid rebates (the children's hospital must have appropriate documentation to demonstrate this);

(5) The covered outpatient drugs must not have been sold or transferred to a person who was not a patient of the children's hospital; and

(6) The covered outpatient drugs must have been purchased on or after the date on which the children's hospital satisfied all requirements for participation in the 340B Program as outlined in section (D) of this notice.

In order to satisfy the last condition listed above, a children's hospital must be able to demonstrate, at a minimum, that as required by section 340B(a)(4)(L)(iii) of the Public Health Service Act, the children's hospital did not have a group purchasing agreement for covered outpatient drugs and satisfied the requirements of section 340B(a)(4)(L)(i) and 340B(a)(4)(L)(ii) at the time the covered outpatient drugs for which rebates are requested were purchased. Participation in a GPO for any covered outpatient drugs would disqualify a children's hospital for retroactive rebates during any quarter that the children's hospital purchased any covered outpatient drug through a GPO or other group purchasing arrangement. Consistent with section 340B(a)(5)(C) of the Public Health Service Act, children's hospitals must have auditable records that support claims for retroactive discounts and permit the Government or manufacturers to audit those records (in accordance with procedures established by the Secretary relating to the number scope and duration of such audits (61 FR 65406)).

In fulfilling the conditions listed above, any children's hospital that believes it is entitled to retroactive discounts may preserve its rights by sending manufacturers a letter requesting such refunds, explaining how they meet the requirements in this notice, and providing adequate documentation of purchases within 30 days being listed on the 340B Covered Entity Database as eligible. Such children's hospitals should engage in good faith efforts to resolve any disputes with manufacturers. To the extent they are unable to resolve disputes and wish to pursue further involvement with the OPA, they are encouraged to follow the guidance on the dispute resolution process as described in the **Federal Register** (61 FR 65406).

Dated: August 26, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9–21109 Filed 8–31–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Health IT Community Tracking Study 2009.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on June 30th, 2009 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by October 1, 2009.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrg.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Health IT Community Tracking Study 2009

Electronic prescribing (e-prescribing) is a central focus of efforts to promote health information technology (IT) and is of particular interest to AHRQ because of its potential to improve patient safety by reducing medication errors. Despite many public- and private-sector initiatives to support e-prescribing, to date, physician adoption and use has been limited (Friedman, Schueth and Bell 2009). Recently, Section 132 of the Medicare Improvements for Patients and

Providers Act of 2008 (MIPPA), Public Law 110–275, authorized a new incentive program for eligible individual providers who are successful e-prescribers. In addition, Section 4101 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, provides incentives for meaningful use of electronic health record technology, which includes the use of e-prescribing.

The potential gains from e-prescribing assume that prescribers and pharmacists have access to the required features and use them. Limited research on the topic suggests, however, that not all e-prescribing systems currently have the full range of e-prescribing features required under MIPPA; that even when the features are available, physician practices face barriers to implementing them effectively; and even when they are implemented at the practice level, physicians may not use them. For example, in a small, exploratory qualitative study by Grossman, *et al.* (2005), physicians did not routinely have access to patient medication histories or formulary data for a significant portion of their patients and when they did, physicians often did not use the information, instead continuing to rely on patients for medication history and pharmacists to identify formulary issues. Several studies have identified that IT system limitations, workflow and training issues, and real or perceived regulatory barriers present obstacles in both the physician and pharmacy settings to electronic transmission of prescriptions (Grossman *et al.* 2007; NORC 2007; Rupp and Warholak 2008; Warholak and Rupp 2009).

AHRQ proposes to conduct a qualitative research study designed to help build knowledge on how the e-prescribing features required under MIPPA are actually being implemented and used by physicians and pharmacies in 12 nationally representative communities. These communities have been studied longitudinally since the mid-1990s as part of the Center for Studying Health System Change (HSC) Community Tracking Study (CTS) (Center for Studying Health System Change 2007). This qualitative study will collect data from physician practices and pharmacies that are using electronic transmission of prescriptions to allow a focus on both the facilitators of and barriers to this critical aspect of e-prescribing. The study will be the first to ask questions of physician practices and pharmacies in the same communities on the same topics, providing a much more complete picture of e-prescribing implementation. For example, in addition to gaining physician and pharmacy perspectives on electronic transmission, the study will explore how physician practices use patient formulary data and how pharmacies perceive changes in the communication with physician practices around formulary issues with e-prescribing.

Information collected by this study will inform strategies to promote the adoption and effective use of e-prescribing being developed by AHRQ and other Department of Health and Human Services agencies, including the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health IT, as well as State and local governments and private health care organizations. In particular, while physician adoption has been the focus of most policy efforts, findings from the study can help identify and shape strategies to promote more effective implementation of e-prescribing in retail and mail-order pharmacies. This work will be conducted by AHRQ's contractor, the Center for Studying Health System Change (HSC), under contract number 290–05–0007–03. This study is being conducted pursuant to AHRQ's statutory authority to conduct and support research on health care and systems for the delivery of such care, including activities with respect to health care technologies, facilities and equipment, 42 U.S.C. 299a(a)(5).

Method of Collection

The study will use qualitative methods, including telephone interviews with physician practices and pharmacies, as well as State pharmacy associations, IT vendors and other e-prescribing experts. Using semi-structured interview protocols, the following specific research questions will be addressed to provide an in-depth look at unexplored barriers to effective e-prescribing use in physician practices and pharmacies, including:

☐ How are physicians using third-party information in making prescribing decisions, including patient medication history, generic drug information, and patient-specific formulary data?

☐ How are physician practices and retail and mail-order pharmacies using e-prescribing systems to communicate electronically with each other?

☐ What are the most common reasons that physician practices and pharmacies communicate about prescriptions generated by physician e-prescribing systems (regardless of how they were sent)?

☐ What are the facilitators of and challenges to implementing e-prescribing features that support physician access to third-party information in making prescribing decisions and features that support electronic communication between physician practices and pharmacies?

☐ What are the perceived effects of having access to e-prescribing features that support physician access to third-party information in making prescribing decisions and features that support electronic communication between physician practices and pharmacies on physician practice and pharmacy operations, physician prescribing behavior and patient outcomes?

☐ What are the implications for policy efforts to promote e-prescribing?

Estimated Annual Respondent Burden

Interviews will be conducted at a total of 110 organizations over the two years of this project. Within each of the 24 participating physician practices (12 annually), two interviews will be conducted: One with the medical director or physician-user best able to describe practice processes for e-prescribing, who will provide a clinical perspective (Interview Protocol 2), and a second with an IT administrator or office manager, who can provide a technical and operational perspective (Interview Protocol 1). The other 86 organizations will each have only one interview, for a total of 43 additional interviews annually. Eight different organization-specific interview protocols have been developed, with response times ranging from 30 minutes to 1 hour.

Exhibit 1 shows the estimated annual burden hours for each organization's time to participate in this research. The total annual burden is estimated to be 57 hours.

Exhibit 2 shows the estimated annual cost burden associated with the organizations' time to participate in this research. The total annual burden is estimated to be $3,004.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of organizations*	Number of responses per organization	Hours per response	Total burden hours
Interview Protocol 1—Physician Practice IT administrator or Office Manager	12	1	30/60	6
Interview Protocol 2—Physician Practice Medical Director or Physician User	12	1	45/60	9
Interview Protocol 3—Pharmacy Pharmacist-In-Charge	28	1	1	28
Interview Protocol 4—State Pharmacy Association Representative	6	1	1	6
Interview Protocol 5—Pharmacy IT Vendor Representative	1	1	1	1
Interview Protocol 6—E-prescribing System Vendor Representative	3	1	1	3
Interview Protocol 7—E-prescribing Connectivity and Content Vendor Representatives	1	3	3	1
Interview Protocol 8—Other E-prescribing Experts	2	1	30/60	1
Total	67	NA	NA	57

* The estimated total number of unique organizations participating in each year of the study is 55 since Interview Protocols 1 and 2 will both be administered to respondents in physician practices.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of organizations*	Total burden hours	Average hourly wage rate**	Total cost burden
Interview Protocol 1—Physician Practice IT Administrator or Office Manager	12	6	$32.62	$196
Interview Protocol 2—Physician Practice Medical Director or Physician User	12	9	80.42	724
Interview Protocol 3—Pharmacy Pharmacist-In-Charge	28	28	48.09	1,347
Interview Protocol 4—State Pharmacy Association Representative	6	6	49.89	299
Interview Protocol 5—Pharmacy IT Vendor Representative	1	1	54.75	55
Interview Protocol 6—E-prescribing System Vendor Representative	3	3	54.75	164
Interview Protocol 7—E-prescribing Connectivity and Content Vendor Representatives	3	3	54.75	164
Interview Protocol 8—Other E-prescribing Experts	2	1	54.75	55
Total	67	57	NA	3,004

* The estimated total number of unique organizations participating in each year of the study is 55 since Interview Protocols 1 and 2 will both be administered to respondents in physician practices.

** Wage rates were calculated using the mean hourly wage from the U.S. Department of Labor, Bureau of Labor Statistics, May 2007 National Occupational Employment and Wage Estimates for the United States, Occupational Employment Statistics (OES), Washington, DC (Feb. 2009), *http://www.bls.gov/oes/2007/may/oes_nat.htm* (accessed April 2009). Wage rate for Interview Protocol 3—Pharmacy Pharmacist-In-Charge reflects the weighted average for retail and mail order pharmacists ($47.58 per hour) and pharmacy chain representatives ($54.75 per hour).

Estimated Annual Costs to the Federal Government

The estimated total cost to the Federal Government for this project is $374,635 over a two-year period from February 2, 2009 to February 1, 2010. The estimated average annual cost is $187,318. Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUAL COST* TO THE FEDERAL GOVERNMENT

Cost component	Total cost	Annualized cost
Project Development and Project Management	$87,783	$43,892
Data Collection Activities	141,048	70,524
Data Analysis	55,884	27,942
Publication and Dissemination of Results	89,920	44,960
Total	374,635	187,318

* Costs are fully loaded including overhead and G&A.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent

request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 19, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–20854 Filed 8–31–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–09–09BU]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Adult Tobacco Survey (NATS)—New—Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use remains the leading preventable cause of disease and death in the United States. Although the prevalence of current smoking among adults decreased significantly from 1998 to 2007 in 44 states, the District of Columbia, and Puerto Rico, only one State and one territory have met Healthy People 2010 targets for reducing adult smoking prevalence to 12%, and six States have shown no substantial changes in prevalence after controlling for age, sex, and race/ethnicity.

CDC proposes to conduct the National Adult Tobacco Survey (NATS) in 2009–2010 to help evaluate and improve the effectiveness of CDC's National Tobacco Control Program (NTCP). The NATS will be a one-time, stratified, random-digit dialed telephone survey of non-institutionalized adults 18 years of age and older. Essential information will be collected on key indicators from each of the NTCP's four goal areas: (1) The prevention of initiation of tobacco use among young people, (2) the elimination of nonsmokers' exposure to secondhand smoke, (3) the promotion of quitting among adults and young people, and (4) the elimination of tobacco-related disparities.

In order to yield results that are representative and comparable at both national and state levels, information will be collected from approximately 1,863 land-line telephone users in each state and the District of Columbia. In addition, a total of approximately 3,000 interviews will be conducted from a national sample of cell phone users to include the growing population of households that rely exclusively on cell phones. All interviews will be conducted using computer-assisted telephone interview (CATI) methodology.

Survey results will be used to develop estimates of tobacco use at the national level by gender and race/ethnicity and to evaluate comprehensive Tobacco Control Programs. Study results will have significant implications for the development of policies and programs aimed at preventing or reducing tobacco use. There are no costs to respondents except their time. The estimated annualized burden hours are 38,303.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults ages 18 or older	Screener for land-line users (pp 11–18 of the NATS)	166,273	1	2/60
	Screener for cell phone users (pp 2–11 of the NATS)	5,400	1	1/60
	National Adult Tobacco Survey (pp 19–92 of the NATS)—landline.	95,013	1	20/60
	National Adult Tobacco Survey (pp 19–92 of the NATS)—cell phone.	3,000	1	20/60

Dated: August 26, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–21043 Filed 8–31–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09–0730]

Agency Forms Undergoing Paperwork; Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the Effectiveness of the Smoke Alarm Installation and Fire Safety Education (SAIFE) Program [OMB No. 0920–0730 Exp. 9/30/2009]—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project seeks a one year extension of its OMB PRA clearance for data collection. Due to early project delays in obtaining clearances for data collection, the project was unable to start as planned and missed evaluating one program cycle, with a program cycle running for approximately one year. This extension is necessary in order to complete the project's original design of evaluating three program cycles of the SAIFE program as implemented in the State of North Carolina. An extension will allow completion of the evaluation of the third and final cycle of the program.

This project will use data from in-person interviews, paper and telephone surveys to assess the effectiveness of the Smoke Alarm Installation and Fire Safety Education (SAIFE) program and its efficacy in delivering fire safety information. The data will be collected from a convenience sample of adults 18 years of age or older who volunteer to participate in the SAIFE program. A total of 360 households will complete the evaluation each year of the data collection for a mass total of 1080 households over the next three years. Participants will be asked to complete a 15-minute survey at two points, once immediately before the intervention and then 6 months afterwards. The survey will assess outcome measures including, but not limited to, changes in knowledge, attitudes, beliefs, and behaviors regarding various aspects of fire safety and prevention; changes in reported residential fire-related injuries and deaths; increased or decreased presence of functioning smoke alarms; and the costs associated with the SAIFE intervention. The evaluation will measure these changes across time, between groups and within groups, among communities that will receive the SAIFE intervention.

CDC programs are currently funded in 16 States to provide for home installation of smoke alarms plus general fire safety education in households at high risk for fire and fire related injury and death. Programs of this type are intended to prevent fire related injury and mortality, but have not been studied scientifically to assess their impact on fire-related injury outcomes. The proposed study represents the first formal effort to evaluate the effectiveness and cost implications of the SAIFE program as implemented in North Carolina. The data collected in this study will have the potential to inform other smoke alarm installation programs, as well as indicate future priorities in prevention and preparedness for residential household fires. The only cost to the participant is the time involved to complete the surveys. The total estimated annualized burden hours are 251.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adult male and female (age 18+ years) screened	425	1	5/60
Adult male and female (age 18+ years) Pre/Post Evaluation survey	360	2	15/60
Adult male and female (age 18+ years) household visit	36	1	1

Dated: August 26, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–21041 Filed 8–31–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–09AF]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of Pharmacy Syringe Access Linked to HIV Testing for Injection Drug Users in New York City (Pharm-HIV)—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

HIV continues to be one of the leading causes of illness and death in the US, among injection drug users who are at high risk of acquiring HIV infection. HIV testing may not be readily accessible to this population in areas where they frequent. The New York State Legislature established an Expanded Syringe Access Demonstration Program (ESAP) in 2001 in New York City. ESAP makes sterile syringes available for injection drug users through participating pharmacies, in order to help reduce the burden of HIV. The regular contact between pharmacists and their injection-drug-using syringe customers through ESAP paves the way for pharmacies to act as access points to health and social services among IDU customers. The expansion of pharmacy services to include referrals for injection-drug-using syringe customers is based on the successes of ESAP, which provides many services beyond syringe exchange.

The New York Academy of Medicine (NYAM) has access to the ESAP list of pharmacies. NYAM will identify 12 ESAP pharmacies in East Harlem, New York City that are situated within predefined target neighborhoods where there are high levels of injection drug use. NYAM study staff will screen the ESAP pharmacies for eligibility by calling down a randomly-ordered list of ESAP-registered pharmacies and enrolling pharmacies willing to participate in this study. NYAM anticipates that they will have to contact 24 ESAP-registered pharmacies in the first year of the project (one pharmacy staff member at each pharmacy) in order to identify the 12 that will participate in the study. Recruitment of pharmacies will occur only during the first year.

At the 12 ESAP-registered pharmacies that join the study, over a three year period, 442 adult (age ≥18 yrs) injection-drug-using syringe customers will

complete a brief quantitative interview after HIV referral or HIV testing is offered to them. HIV-seropositive injection-drug-using syringe customers who are identified during HIV testing will be immediately linked to social and medical services. Ten of the 12 ESAP Pharmacies will provide referrals to local HIV testing sites for their injection-drug-using syringe customers. At these ten pharmacies, 40 adult pharmacy staff will be surveyed on pharmacy staff attitudes and behaviors regarding HIV testing and referral.

The remaining two ESAP pharmacies will pilot test the feasibility of offering and performing HIV counseling and testing in the pharmacy for injection-drug-using syringe customers. At these two pharmacies, 8 adult (age ≥18 yrs) pharmacy staff members will be surveyed on pharmacy staff attitudes and behaviors regarding HIV testing and referral. At the 12 pharmacies, 12 pharmacy staff members (one from each pharmacy) will be surveyed monthly to track study progress and obstacles to completing the study. Twelve pharmacy staff members (one from each pharmacy) will complete a daily syringe sales and referral log.

There is no cost to the injection drug using customers who provide information to this study other than their time. The total estimated annual burden hours are 496 hours.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondent	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Pharmacist	Pharmacy telephone screening and enrollment form.	8	1	10/60
Pharmacist and Pharmacy Technician	Pharmacy staff baseline survey	48	1	20/60
Pharmacist and Pharmacy Technician	Pharmacy staff six monthly survey	48	2	20/60
Pharmacist and Pharmacy Technician	Pharmacy staff exit survey	48	1	20/60
Pharmacist	Pharmacy staff monthly survey	12	10	10/60
Pharmacy Technician	Syringe sales and referral log	12	300	5/60
Syringe-customer study participant	Pharmlink Participant Baseline Survey	221	1	30/60

Dated: August 26, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–21037 Filed 8–31–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0131]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Marketing Act of 1987

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 1, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0435. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792, Elizabeth.Berbakos@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prescription Drug Marketing Act of 1987; 21 CFR Part 203 (OMB Control Number 0910–0435)—Extension

FDA is requesting OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) for the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293). PDMA was intended to ensure that drug products purchased by consumers are safe and effective, and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

TABLE 1.—REPORTING REQUIREMENTS

21 CFR 203.11	Applications for reimportation to provide emergency medical care.
21 CFR 203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier).
21 CFR 203.30(a)(3), (a)(4), and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier).
21 CFR 203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier).
21 CFR 203.31(a)(3), (a)(4), and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier).
21 CFR 203.37(a)	Investigation of falsification of drug sample records.
21 CFR 203.37(b)	Investigation of a significant loss or known theft of drug samples.
21 CFR 203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
21 CFR 203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.
21 CFR 203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.

TABLE 2.—RECORDKEEPING REQUIREMENTS

21 CFR 203.23(a) and (b)	Credit memo for returned drugs.
21 CFR 203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs.
21 CFR 203.30(a)(2) and 21 CFR 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized by the appropriate State authority to prescribe the product.
21 CFR 203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives.
21 CFR 203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
21 CFR 203.31(e)	Lists of manufacturers' and distributors' representatives.
21 CFR 203.34	Written policies and procedures describing administrative systems.
21 CFR 203.37(a)	Report of investigation of falsification of drug sample records.
21 CFR 203.37(b)	Report of investigation of significant loss or known theft of drug samples.
21 CFR 203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed. (The information collection in 21 CFR 203.38(b) is already approved under OMB control number 0910–0139).
21 CFR 203.39(d)	Records of drug samples destroyed or returned by a charitable institution.
21 CFR 203.39(e)	Record of drug samples donated to a charitable institution.
21 CFR 203.39(f)	Records of donation and distribution or other disposition of donated drug samples.
21 CFR 203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
21 CFR 203.50(a)	Drug origin statement.
21 CFR 203.50(b)	Retention of drug origin statement for 3 years.
21 CFR 203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals:

(1) To ban the reimportation of prescription drugs produced in the United States, except when reimported by the manufacturer or under FDA authorization for emergency medical care;

(2) To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample;

(3) To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;

(4) To require licensed or authorized practitioners to request prescription drug samples in writing;

(5) To mandate storage, handling, and recordkeeping requirements for prescription drug samples;

(6) To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization;

(7) To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

In the **Federal Register** of March 24, 2009 (74 FR 12365), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment.

Comment Summary: The comment pertained to the recordkeeping requirements in § 203.50(a) and (b) (21 CFR 203.50(a) and (b)).

The comment concluded that FDA's estimate of ''0'' recordkeeping hours for these regulations in table 2 of the March 24, 2009, notice was in error. In summary, the comment contended: (1) Pedigrees must be passed by nonauthorized distributors of record prior to each wholesale distribution; (2) all wholesale distributors that provide or receive pedigrees after December 1, 2006, must retain copies of the pedigrees for 3 years; and (3) those records must include names and addresses of all parties to the transaction and the date of the transactions.

The comment offered no estimates for the recordkeeping provisions in § 203.50(a) and (b). The comment explained that it is unable to suggest estimates for the burden hours because most of its members ''have likely received a designation of 'ADR' status by most drug manufacturers for most of the prescription drug products that they purchase, and they provide pedigrees only on a limited basis.'' Thus, the comment said, there are a large number of distributors that are not members of its organization but are subject to the pedigree requirements and, therefore, the burden hours that its members alone accrue would not be reflective of the entire population of distributors that are affected, and would likely be a minority of the total burden hours that all distributors experience.

The comment recommended that FDA ''conduct a PRA review and estimate of the paperwork burden for healthcare distributors to comply with these regulations.''

FDA Response: FDA appreciates the comment and, as requested, we plan to conduct research to obtain estimates for the burden hours that may be currently incurred by distributors to comply with the recordkeeping provisions in § 203.50. We are requesting that interested persons submit to the docket (identified in brackets in the heading of this document) data on the burden hours currently incurred by distributors to comply with the recordkeeping provisions in § 203.50. In response to the comment, we are also adding to the Estimated Annual Recordkeeping Burden (table 4 of this document) recordkeeping estimates for § 203.50. We used these estimates in previous **Federal Register** notices based on information we received at that time, and no comments were received on these burden hours. If our research results in new data that differs from these estimates, we will amend the approval for OMB control number 0910–0435 to include revised estimates for these provisions.

FDA estimates the burden of this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours[2]
203.11	1	1	1	.5	1
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4), and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4), and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	50	4	200	.25	50
203.37(b)	50	40	2,000	.25	500
203.37(c)	1	1	1	1	1
203.37(d)	50	1	50	.08	4
203.39(g)	1	1	1	1	1
Total Reporting Burden Hours					2,285,536

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Estimates are not exact due to rounding.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Recordkeeping	Total Annual Responses	Hours per Response	Total Hours[2]
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Recordkeeping	Total Annual Responses	Hours per Response	Total Hours[2]
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400
203.31(d)(1) and (d)(2)	2,208	1	2,208	40	88,320
203.31(d)(4)	442	1	442	24	10,608
203.31(e)	2,208	1	2,208	1	2,208
203.34	90	1	90	40	3,600
203.37(a)	50	4	200	6	1,200
203.37(b)	50	40	2,000	6	12,000
203.39(d)	65	1	65	1	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8	25,768
203.39(g)	3,221	1	3,221	8	25,768
203.50(a)	125	100	12,500	.17	2,125
203.50(b)	125	100	12,500	.50	6,250
203.50(d)	691	1	691	2.0	1,382
Total Recordkeeping Burden Hours					332,769

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Estimates are not exact due to rounding.

Dated: August 25, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21026 Filed 8–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0406]

Agency Emergency Processing Under Office of Management and Budget Review; Tobacco Product Establishment Registration and Submission of Certain Health Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns the submission of tobacco product establishment registration and submission of certain health information, including ingredient listing and health related documents, as required by The Family Smoking Prevention and Tobacco Control Act (FSPTCA).

DATES: Fax written comments on the collection of information by September 16, 2009. FDA is requesting approval of this emergency processing by September 16, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the title, ''Tobacco Product Establishment Registration and Submission of Certain Health Information.'' Also include the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794, e-mail: *Jonnalynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. On June 22, 2009, the President signed FSPTCA into law (Public Law 111–31). Section 101 of FSPTCA amends the Federal Food, Drug, and Cosmetic Act (the act) by adding, among other things, new sections 904 (21 U.S.C. 394) and 905 (21 U.S.C. 395). Section 905 requires the annual registration of any ''establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.'' Section 905 also requires this registration be completed by December 31 of each year. To allow adequate time for establishment owners and operators to complete the registration process, and to match similar provisions applicable to other FDA regulated products, FDA plans to begin accepting establishment registrations on October 1, 2009.

Section 904(a)(1) of the act requires each tobacco product manufacturer or importer, or agent thereof to submit a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand. Section 904(a)(4) requires each tobacco

product manufacturer or importer, or agent thereof to submit all documents developed after enactment of the FSPTCA that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives. This information must be submitted by December 22, 2009 (6 months after the date of enactment of FSPTCA).

FDA plans to collect the information submission requirements of sections 905, 904(a)(1), and 904(a)(4) of the act through a single electronic portal. In order to provide respondents with adequate time to prepare information for submission, FDA plans to launch the electronic portal for the collection of this information on October 1, 2009. If FDA were to use the normal PRA clearance procedures, the availability of the electronic portal and the submission of information by respondents could not begin with adequate time to meet the respective statutory deadlines.

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.

Title: Tobacco Product Establishment Registration and Submission of Certain Health Information

Description of Respondents: Respondents to this collection of information are: (1) All persons who own or operate any establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products; and (2) each tobacco product manufacturer or importer, or agents thereof.

FSPTCA amends the act by creating a new category of regulated products, tobacco products. FSPTCA creates many new requirements for the tobacco industry. Section 101 of FSPTCA amends the act by adding, among other things, new sections 904 and 905. Section 905 requires the annual registration of any ''establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.'' The Secretary of Health and Human Services (the Secretary) has delegated to the Commissioner of Food and Drugs (the Commissioner) the responsibility for administering the act, including section 905.

Section 905 requires owners or operators of each establishment to register:

1. Their name,
2. Places of business,
3. A list of all tobacco products which are manufactured by that person,
4. A copy of all labeling and a reference to the authority for the marketing of any tobacco product subject to a tobacco product standard under section 907 of the act (21 U.S.C. 397) or to premarket review under section 910 of the act (21 U.S.C. 399a),
5. A copy of all consumer information and other labeling,
6. A representative sampling of advertisements,
7. Upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product, and
8. Upon request made by the Secretary, if the registrant has determined that a tobacco product contained in the product list is not subject to a tobacco product standard established under section 907, a brief statement of the basis upon which the registrant made such determination.

Section 904(a)(1) of the act requires each tobacco product manufacturer or importer, or agent thereof to submit a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand. Section 904(a)(4) requires each tobacco product manufacturer or importer, or agent thereof, to submit all documents developed after enactment of the FSPTCA that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives.

The Secretary has delegated to the Commissioner the responsibility for administering the act, including section 904.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Tobacco Product Establishment Registration	100,000	1	100,000	0.75	75,000
Tobacco Product Ingredient Listing	100,000	1	100,000	0.75	75,000
Documents Related to Health Information	10	1	10	1	10
Total					150,010

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21099 Filed 8–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0050]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Importer's Entry Notice'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792, e-mail: *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 28, 2009 (74 FR 25554), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0046. The approval expires on August 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: August 26, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21097 Filed 8–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0209] (formerly Docket No. 2007D–0491)

Guidance for Industry: Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' The document provides guidance to the dietary supplement industry for complying with the labeling requirements prescribed for dietary supplement manufacturers, packers, and distributors by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA). Separate guidance on labeling requirements for nonprescription (over-the-counter) human drugs marketed without an approved application, issued by FDA's Center for Drug Evaluation and Research, is announced elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written requests for single copies of the guidance to the Office of Nutrition, Labeling, and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20750. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Vasilios Frankos, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

On December 22, 2006, the President signed into law DSNDCPA (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The law also amended the act to add section 403(y) (21 U.S.C. 343(y)), which requires the label of a dietary supplement marketed in the United States to include a domestic address or domestic telephone number through which the product's manufacturer, packer, or distributor may receive a report of a serious adverse event associated with the dietary supplement.

In the **Federal Register** of January 2, 2008 (73 FR 197), FDA announced the availability of a draft guidance entitled ''Questions and Answers Regarding the Labeling of Dietary Supplements as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act.'' In addition to providing guidance for industry on how to comply with the labeling requirements in section 403(y) of the act, the draft guidance stated that FDA intended to begin enforcing the requirements of section 403(y) for dietary supplements labeled on or after January 1, 2009. Although interested parties can comment on any guidance at any time, to ensure that the agency would have the opportunity to consider comments on the draft guidance before it began work on the final version, FDA requested that interested parties submit comments by March 3, 2008. On December 11, 2008 (73 FR 75438), FDA announced the availability of a revised version of the draft guidance document to notify the dietary supplement industry and other members of the public that it intended to exercise enforcement discretion with regard to the labeling requirements of section 403(y) of the act for an additional 1-year period (i.e., for dietary supplements labeled before January 1, 2010) because the agency was still in the process of reviewing the comments and finalizing the guidance. The agency has now completed its review and evaluation of the comments received and has modified the guidance where appropriate.

The guidance contains questions and answers relating to the labeling requirements in section 403(y) of the act and provides guidance to industry on the following topics: (1) The meaning of ''domestic address'' for purposes of the

labeling requirements of section 403(y) of the act; (2) FDA's recommendation for the use of an introductory statement before the domestic address or domestic telephone number that is required to appear on the product label under section 403(y) of the act; and (3) that FDA intends to begin enforcing the labeling requirements of section 403(y) of the act for products labeled on or after September 30, 2010.

FDA is issuing this guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the labeling of dietary supplements as required by the DSNDCPA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control no. 0910–0642.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/guidance.html*.

Dated: August 26, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21094 Filed 8–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0429] (formerly Docket No. 2007D–0496]

Guidance for Industry on Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers.'' This guidance is intended to assist industry in complying with the labeling requirements for nonprescription (over-the-counter (OTC)) human drugs marketed without an approved application established by the Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA). Separate guidance, issued by the Center for Food Safety and Applied Nutrition on complying with the labeling requirements for dietary supplements, is announced elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, rm. 2201, Rockville, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Walter Ellenberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5488, Silver Spring, MD 20993–0002, 301–796–2090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Labeling of Nonprescription Human Drug Products Marketed Without an Approved Application as Required by the Dietary Supplement and Nonprescription Drug Consumer Protection Act: Questions and Answers.'' On December 22, 2006, the President signed into law DSNDCPA (Public Law 109–462, 120 Stat. 3469). This law amends the Federal Food, Drug, and Cosmetic Act (the act) with respect to serious adverse event reporting for dietary supplements and nonprescription drugs marketed without an approved application. The law also amended the act to add section 502(x) (21 U.S.C. 352(x)), which requires the label of an OTC drug product marketed in the United States without an approved application to include a domestic address or domestic telephone number through which the product's manufacturer, packer, or distributor may receive reports of serious adverse events associated with its use.

In the **Federal Register** of January 2, 2008 (73 FR 196), FDA announced the availability of a draft version of the guidance containing questions and answers relating to the new labeling requirements under Public Law 109–462 for OTC drugs marketed without an approved application. In addition to providing guidance for industry on how to comply with the labeling requirements in section 502(x) of the act, the draft guidance stated that FDA intended to begin enforcing the requirements of section 502(x) for OTC human drugs marketed without an approved application labeled on or after January 1, 2009. Although interested parties can comment on any guidance at any time, to ensure that the agency would have the opportunity to consider comments on the draft guidance before beginning work on the final version of the guidance, FDA requested that interested parties submit comments by March 3, 2008. On December 11, 2008 (73 FR 75436), FDA announced the availability of a revised draft guidance to notify industry and other members of the public that it intended to exercise enforcement discretion with regard to the labeling requirements of section 502(x) of the act for an additional 1-year period (i.e., for OTC drug products marketed without an approved

application that are labeled on or after January 1, 2010), because the agency was still in the process of finalizing the guidance. The agency has now completed its review and evaluation of the comments received and has modified the guidance where appropriate.

The document provides guidance to industry on the following topics: (1) The meaning of ''domestic address'' for purposes of the labeling requirements of section 502(x) of the act; (2) FDA's recommendation for the use of an introductory statement before the domestic address or domestic telephone number that is required to appear on the product labeling under section 502(x) of the act (21 U.S.C. 352(x)); and (3) that FDA intends to begin enforcing the labeling requirements of section 502(x) of the act for products labeled on or after September 30, 2010.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control no. 0190–0640.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/* default.htm or *http://www.regulations.gov*.

Dated: August 26, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–21093 Filed 8–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Initial Review Group Biomedical Research Review Subcommittee.

Date: October 26–27, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Philippe Marmillot, PhD, Scientific Review Officer, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Rm. 2019, Bethesda, MD 20892. 301–443–2861. *marmillotp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271 Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20860 Filed 8–31–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review; Group Neuroscience Review Subcommittee.

Date: November 16–17, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel—Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Beata Buzas, PhD, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271 Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20865 Filed 8–31–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel. CIDR Access Conflict Subcommittee.

Date: September 16, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852. (301) 402–0838. *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20869 Filed 8–31–09; 8:45 am]

BILLING CODE 4140–01–M

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. Cancer Pathobiology ARRA CR.

Date: September 18, 2009.

Time: 2 p.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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Neurodevelopment and Neurobiology.

Date: September 30, 2009.

Time: 1 p.m. to 4 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: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892. (301) 451–1328. *hamelinc@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 25, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21046 Filed 8–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Vaccine Development: Small Business Grant Applications.

Date: September 8, 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: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21047 Filed 8–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 National Advisory Child Health and Human Development Council.

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 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: September 21, 2009.

Open: 8 a.m. to 12:30 p.m.

Agenda: (1) A report by the Director, NICHD; (2) and annual review of the Division of Intramural Research; (3) Intellectual and Developmental Disabilities Branch Presentation; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health, and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 25, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–21045 Filed 8–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism, Initial Review Group; Clinical, Treatment and Health Services Research Review Subcommittee.

Date: October 13–14, 2009.

Time: 8:30 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC.

Contact Person: Katrina L. Foster, PhD, Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852. 301–443–4032, *katrina@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS).

Dated: August 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–20862 Filed 8–31–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–E–0058]

Determination of Regulatory Review Period for Purposes of Patent Extension; TAPENTADOL HYDROCHLORIDE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TAPENTADOL HYDROCHLORIDE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims 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 TAPENTADOL HYDROCHLORIDE (tapentadol hydrochloride). TAPENTADOL HYDROCHLORIDE is indicated for the relief of moderate to severe acute pain in patients 18 years of age or older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TAPENTADOL HYDROCHLORIDE (U.S. Patent No. RE 39,593) from Grunenthal GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility 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 TAPENTADOL HYDROCHLORIDE 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 TAPENTADOL HYDROCHLORIDE is 2,880 days. Of this time, 2,577 days occurred during the testing phase of the regulatory review period, while 303 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*: January 3, 2001. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 3, 2001.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: January 23, 2008. FDA has verified the applicant's claim that the new drug application (NDA) 22–304 was submitted on January 23, 2008, as the date the NDA for TAPENTADOL HYDROCHLORIDE (NDA 22–304) was initially submitted.

3. *The date the application was approved*: November 20, 2008. FDA has verified the applicant's claim that NDA 22–304 was approved on November 20, 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 application for patent extension, this applicant seeks 1,492 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 2, 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 March 1, 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: June 8, 2009.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E9–21100 Filed 8–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Chemical and Petrochemical Inspections, LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Chemical and Petrochemical Inspections, LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Chemical and Petrochemical Inspections, LP, 5300 39th Street, Groves, TX 77619, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Chemical and Petrochemical Inspections, LP, as commercial gauger and laboratory became effective on June 02, 2009. The next triennial inspection date will be scheduled for June 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 25, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–21106 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 614 Heron Drive, Bridgeport, NJ 08014, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on June 10, 2009. The next triennial inspection date will be scheduled for June 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 25, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–21102 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–600K, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322; OMB Control No. 1615–0087.

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 11, 2009, at 74 FR 27810, 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 October 1, 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 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 OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0087 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate Under section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–600K. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under section 322 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,374 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 26, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–20992 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–865, Extension of a Currently Approved Information Collection; Comment Request

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: 30-Day Notice of Information Collection under Review: Form I–865,

Sponsor's Notice of Change of Address; OMB Control No. 1615–0076.

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 4, 2009, at 74 FR 26876, 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 October 1, 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 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 OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0076 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Sponsor's Notice of Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–865. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form will be used by every sponsor who has filed an Affidavit of Support under section 213A of the Immigration and Nationality Act to notify the USCIS of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 26, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–20991 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–508 and Form I–508F, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–508 and I–508F, Waiver of Rights, Privileges, Exemptions and Immunities; OMB Control No. 1615–0025.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request 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 26411, 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 October 1, 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 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 OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0025 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–508 and Form I–508F. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This form is used by USCIS to determine eligibility of an applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–508, 1,800 responses at 5 minutes (.083) per response, and Form 508F, 200 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 166 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: August 26, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–20985 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Saybolt LP, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Saybolt LP, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 1235 Riverside Dr., Suite 202, Memphis, TN 38106, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Saybolt LP, as commercial gauger became effective on June 06, 2009. The next triennial inspection date will be scheduled for June 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 25, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–21101 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of SGS North America, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of SGS North America, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., 1212 North 39th Street, Suite 330, Tampa, FL 33605, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of SGS North America, Inc., as commercial gauger became effective on June 04, 2009. The next triennial inspection date will be scheduled for June 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 25, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–21103 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Camin Cargo Control, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Camin Cargo Control, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Camin Cargo Control, Inc., 2844 Sharon Street, Suite B, Kenner, LA 70062, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to

the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Camin Cargo Control, Inc., as commercial gauger became effective on June 16, 2009. The next triennial inspection date will be scheduled for June 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 25, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–21105 Filed 8–31–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0508]

Notification of the Imposition of Conditions of Entry for Certain Vessels Arriving to the United States, Republic of the Congo

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it will impose conditions of entry on vessels arriving to the United States from the Republic of the Congo, with the exception of vessels arriving from the Djeno Oil Terminal, a single buoy mooring off-shore.

DATES: The requirements announced in this notice will become effective September 15, 2009.

ADDRESSES: This notice will be available for inspection and copying at the Docket Management Facility at the U.S. Department of Transportation, Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Michael Brown, International Port Security Evaluation Division, Coast Guard, telephone 202–372–1081. 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

Section 70110 of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, Nov. 25, 2002) (46 U.S.C. 70110) provides that the Secretary of Homeland Security may impose conditions of entry on vessels requesting entry into the United States arriving from ports that are not maintaining effective anti-terrorism measures, may deny entry into the United States to any vessel that does not meet such conditions set forth herein, and shall provide public notice for passengers of the ineffective antiterrorism measures. The Coast Guard has been delegated the authority by the Secretary to carry out the provisions of this section. Previous notices have imposed or removed conditions of entry on vessels arriving from certain countries and those conditions of entry and the countries they pertain to remain in effect unless modified by this notice.

Based on an assessment conducted pursuant to the provisions of 46 U.S.C. 70108 and the International Ship and Port Facility Security (ISPS) Code, the Coast Guard has determined that ports in the Republic of the Congo are not maintaining effective anti-terrorism measures. Inclusive to this determination is an assessment that the Republic of the Congo presents significant risk of introducing instruments of terror into international maritime commerce.

Consistent with 46 U.S.C. 70109, the United States notified the Republic of the Congo of this determination on December 24, 2008, and identified steps necessary to improve the antiterrorism measures in the Republic of the Congo. To date, the United States cannot confirm that the identified deficiencies have been corrected.

Accordingly, effective September 15, 2009, the Coast Guard will impose the following conditions of entry on vessels that visited ports in the Republic of the Congo, with the exception of vessels arriving from the Djeno Oil Terminal, a single buoy mooring off-shore, during their last five port calls. Vessels must:

- Implement measures per the ship's security plan equivalent to ''Security Level 2'' while in a port in the Republic of the Congo. As defined in the ISPS Code and incorporated herein, ''Security Level 2'' refers to the ''level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident.''
- Ensure that each access point to the ship is guarded and that the guards have total visibility of the exterior (both landside and waterside) of the vessel while the vessel is in ports in the Republic of the Congo. Guards may be provided by the ship's crew, however additional crewmembers should be placed on the ship if necessary to ensure that limits on maximum hours of work are not exceeded and/or minimum hours of rest are met. Guards may also be provided by outside security forces approved by the ship's master and ''Company Security Officer.'' As defined in the ISPS Code and incorporated herein, ''Company Security Officer'' refers to the ''person designated by the Company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained and for liaison with port facility security officers and the ship security officer.''
- Attempt to execute a Declaration of Security while in port in the Republic of the Congo;
- Log all security actions in the ship's log; and
- Report actions taken to the cognizant Coast Guard Captain of the Port prior to arrival into U.S. waters.

In addition, based on the findings of a Coast Guard boarding or examination, vessels may be required to ensure that each access point to the ship is guarded by armed security guards and that they have total visibility of the exterior (both landside and waterside) of the vessel while in U.S. ports. The number and position of the guards has to be acceptable to the cognizant Coast Guard Captain of the Port prior to the vessel's arrival.

Consistent with 46 U.S.C. 70110, the United States may deny entry into the United States to any vessel that does not meet the conditions set forth herein. This notice also informs passengers of the ineffective antiterrorism measures at ports in the Republic of the Congo.

This notice is issued under authority of 46 U.S.C. 70110(a).

Dated: August 10, 2009.

Sally Brice-O'Hara,

Rear Admiral, USCG, Deputy Commandant for Operations.

[FR Doc. E9–21020 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0760]

Merchant Marine Personnel Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will meet in Martinsburg, WV, to discuss various issues relating to the training and fitness of merchant marine personnel. This meeting is open to the public.

DATES: MERPAC will meet on Tuesday, September 22, 2009, from 8 a.m. until 4 p.m., and Wednesday, September 23, 2009, from 8 a.m. until 3 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 9, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 9, 2009.

ADDRESSES: The Committee will meet in Room #335, the Dales-Larsen Training Room at the U. S. Coast Guard National Maritime Center, 100 Forbes Drive, Martinsburg, WV. Send written material and requests to make oral presentations to Mr. Mark Gould, Assistant to the Designated Federal Officer (ADFO) of MERPAC, at COMMANDANT (CG–5221), ATTN MERPAC, U.S. COAST GUARD, 2100 2nd ST., SW., STOP 7126, WASHINGTON, DC 20593–7126. This notice may be viewed in our online docket, USCG–2009–0760, at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gould, Assistant to the DFO of MERPAC, at 202–372–1409.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). Please be advised that in order to gain admittance to the National Maritime Center building, you must provide identification in the form of a government-issued picture identification card.

Agenda of Meeting

The agenda for the September 22, 2009, Committee meeting is as follows:

(1) The full committee will meet to discuss the objectives for the meeting.

(2) Working groups addressing the following task statements may meet to deliberate—

(a) Task Statement 30, concerning Utilizing Military Sea Service for Standards of Training, Certification and Watchkeeping (STCW) Certifications;

(b) Task Statement 58, concerning Stakeholder Communications During the Mariner Licensing and Documentation (MLD) Program Restructuring and Centralization;

(c) Task Statement 64, concerning Recommendations on Areas in the STCW Convention and the STCW Code Identified for Comprehensive Review; and

(d) Task Statement 71, concerning Review of Coast Guard/International Maritime Organization (IMO) Operational Level Examination Questions for Both Deck and Engine Licenses.

(3) New working groups may be formed to address issues proposed by the Coast Guard, MERPAC members, or the public.

(4) At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

The agenda for the September 23, 2009, Committee meeting is as follows:

(1) Introduction;

(2) Reports from working groups working on the following;

(a) Task Statement 30, concerning Utilizing Military Sea Service for STCW Certification;

(b) Task Statement 58, concerning Stakeholder Communications During MLD Program Restructuring and Centralization;

(c) Addendum to Task Statement 64, concerning Recommendations on Areas in the STCW Convention and the STCW Code Identified for Comprehensive Review; and

(d) Task Statement 71, concerning Review of Coast Guard/IMO Operational Level Examination Questions for Both Deck and Engine Licenses.

(3) Other items which may be discussed:

(a) Standing Committee-Prevention through People.

(b) Briefings concerning on-going projects or topics of interest to MERPAC.

(c) Other items brought up for discussion by the Committee or the public.

(4) At the end of the day, the working groups will make a report and, if applicable, recommendations for the full committee to consider for presentation to the Coast Guard. Official action on these recommendations may be taken on this date.

Procedural

This meeting will be open to the public. However, please be advised that in order to gain admittance to the National Maritime Center building, you must provide identification in the form of a government-issued picture identification card. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at a meeting, please notify the Assistant to the DFO no later than September 9, 2009. Written material for distribution at a meeting should reach the Coast Guard no later than September 9, 2009. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the Assistant to the DFO no later than September 9, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant to the DFO as soon as possible.

Dated: August 24, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9–21021 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COAST GUARD: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593; (202) 475–5609; GSA: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208–5399; NAVY: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: August 27, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Suitable/Available Properties

Building

Idaho

Bldg. CF–602
Idaho National Lab
Idaho Falls ID 83415
Landholding Agency: GSA
Property Number: 54200920012
Status: Excess
GSA Number: 9–B–ID–569
Comments: 4224 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. ARA–617
Idaho National Lab
Idaho Falls ID 83415
Landholding Agency: GSA
Property Number: 54200920013
Status: Excess
GSA Number: 9–B–ID–571
Comments: 1631 sq. ft., needs repair, presence of asbestos/possible contamination, off-site use only.

Bldg. PBF–619
Idaho National Lab
Idaho Falls ID 83415
Landholding Agency: GSA
Property Number: 54200920014
Status: Excess
GSA Number: 9–B–ID–568
Comments: 5704 sq. ft., needs repair, presence of asbestos/lead paint, possible contamination, offsite use only.

Iowa

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Landholding Agency: GSA
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Comments: 5743 sq. ft., presence of lead paint, most recent use—offices/classrooms/storage, subject to existing easements.

U.S. Army Reserve Center
904 W. Washington St.
Mount Pleasant IA 52641
Landholding Agency: GSA
Property Number: 54200920018
Status: Excess
GSA Number: 7–D–IA–0509
Comments: Approx. 5811 sq. ft., presence of lead paint, most recent use—admin/maint/storage, license/easement, published incorrectly on 7/10/09.

Maine

3 Bldgs.
Acadia National Park
Hancock ME
Landholding Agency: Interior
Property Number: 61200930005
Status: Unutilized
Directions: 82338, 82339, 82340
Comments: 80/600/1480 sq. ft., off-site use only.

Montana

Raymond MT Property
1559 Hwy 16 North
Raymond MT 59256
Landholding Agency: GSA
Property Number: 54200920019
Status: Surplus
GSA Number: 7–X–MT–630
Comments: 650 sq. ft., most recent use—office, off-site use only.

Land

Texas

Bee Cave Natl Guard Property
408 St. Stephens School Rd
Austin TX 78746

Landholding Agency: GSA
Property Number: 54200930007
Status: Surplus
GSA Number: 7–D–TX–1108
Comments: 0.67 acres.

West Virginia

6 Tracts
Matewan WV
Landholding Agency: GSA
Property Number: 54200930008
Status: Excess
GSA Number: 4–D–WV–0556–1
Directions: 1149, 1159, 1161, 1166, 1181, 1187
Comments: 4.57 acres, subject to building restrictions.

Suitable/Unavailable Properties

Building

Arizona

Water Conservation Lab
4331 E. Broadway Rd.
Phoenix AZ 85040
Landholding Agency: GSA
Property Number: 54200820013
Status: Excess
GSA Number: 9–A–AZ–846–1
Comments: 11,365 sq. ft. main bldg. w/11 additional bldgs. & 66 paved parking spaces, easement restrictions, zoning issue.

Arkansas

Job Corps Center
2020 Vance St.
Little Rock AR 72206
Landholding Agency: GSA
Property Number: 54200920003
Status: Surplus
GSA Number: 7–L–AR–0573
Comments: 74,570 sq. ft., 6 bldgs. most recent use—office/residential.

California

Social Security Building
505 North Court Street
Visalia Co: Tulare CA 93291
Landholding Agency: GSA
Property Number: 54200610010
Status: Surplus
GSA Number: 9–G–CA–1643
Comments: 11,727 sq. ft., possible lead paint, most recent use—office.

Old Customs House
12 Heffernan Ave.
Calexico CA 92231
Landholding Agency: GSA
Property Number: 54200710016
Status: Surplus
GSA Number: 9–G–CA–1658
Comments: 16,108 sq. ft., possible asbestos/lead paint, zoned commercial, major repairs for long term use, historic building.

Defense Fuel Support Pt.
Estero Bay Facility
Morro Bay CA 93442
Landholding Agency: GSA
Property Number: 54200810001
Status: Surplus
GSA Number: 9–N–CA–1606
Comments: Former 10-acre fuel tank farm w/associated bldgs./pipelines/equipment, possible asbestos/PCBs.

Boyle Heights SSA Bldg.
N. Breed St.
Los Angeles CA 90033
Landholding Agency: GSA
Property Number: 54200840010
Status: Surplus
GSA Number: 9–G–CA–1676
Comments: 10,815 sq. ft., requires seimic strengthening to satisfy substantial life-safety criteria; expected lateral loads in structure rather high.

Indiana

Radio Tower
Cannelton Locks & Dam
Perry IN
Landholding Agency: GSA
Property Number: 54200830020
Status: Excess
GSA Number: 1–D–IN–569E
Comments: Tower/88 sq. ft. comm storage bldg., heavily wooded area.

John A. Bushemi USARC
3510 W 15th Ave
Gary IN 46404
Landholding Agency: GSA
Property Number: 54200830027
Status: Excess
GSA Number: 1–D–IN–0602
Comments: 18,689 sq. ft. admin bldg & 3780 sq. ft. maintenance bldg.

Maryland

Federal Office Building
7550 Wisconsin Ave.
Bethesda MD 20814
Landholding Agency: GSA
Property Number: 54200920007
Status: Surplus
GSA Number: GMR–1101–1
Comments: 100,000 sq. ft., 10-story, requires major renovation, limited parking.

Massachusetts

Federal Office Bldg
Main & Bridge St.
Springfield MA 01101
Landholding Agency: GSA
Property Number: 54200740002
Status: Excess
GSA Number: MA–6262–1
Comments: 30,000 sq. ft., 27% occupied, recommend complete system upgrade.

Michigan

Social Security Bldg.
929 Stevens Road
Flint MI 48503
Landholding Agency: GSA
Property Number: 54200720020
Status: Excess
GSA Number: 1–G–MI–822
Comments: 10,283 sq. ft., most recent use—office.

Trenton Border Patrol Station
23100 West Road
Brownstown MI 48183
Landholding Agency: GSA
Property Number: 54200910003
Status: Excess
GSA Number: 1–X–MI–828–1
Comments: 3989 sq. ft., possible asbestos/lead paint, most recent use—office/storage.

Missouri

Federal Bldg/Courthouse
339 Broadway St.
Cape Girardeau MO 63701
Landholding Agency: GSA
Property Number: 54200840013
Status: Excess
GSA Number: 7–G–MO–0673
Comments: 47,867 sq. ft., possible asbestos/lead paint, needs maintenance & seismic upgrades, 30% occupied—tenants to relocate within 2 yrs.

Nebraska

Environmental Chemistry
Branch Laboratory
420 South 18th St.
Omaha NE 68102
Landholding Agency: GSA
Property Number: 54200810010
Status: Excess
GSA Number: 7–D–NE–532
Comments: 11,250 sq. ft., needs repair, frequent basement flooding, requires large sump pumps, most recent use—laboratory.

New Hampshire

Federal Building
719 Main St.
Parcel ID: 424–124–78
Laconia NH 03246
Landholding Agency: GSA
Property Number: 54200920006
Status: Excess
GSA Number: 1–G–NH–0503
Comments: 31,271 sq. ft., most recent use—office bldg., National Register nomination pending.

New Jersey

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Landholding Agency: GSA
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Comments: 21 bldgs., need rehab, most recent use—barracks/mess hall/garages/quarters/admin., may be issues w/right of entry, utilities privately controlled, contaminants.

New York

Fleet Mgmt. Center
5–32nd Street
Brooklyn NY 11232
Landholding Agency: GSA
Property Number: 54200620015
Status: Surplus
GSA Number: 1–G–NY–0872B
Comments: 12,693 sq. ft., most recent use—motor pool, heavy industrial.

Federal Building
Brinkerhoff/Margaret Streets
Plattsburgh NY 12901
Landholding Agency: GSA
Property Number: 54200820005
Status: Surplus
GSA Number: 1–G–NY–0898–1A
Comments: 13,833 sq. ft., eligible for National Register of Historic Places w/National Ranking of 5, most recent use—office, federal tenants to relocate in August 2008.

Agriculture Inspection Station
193 Meridan Road
Champlain NY 12919
Landholding Agency: GSA
Property Number: 54200910004
Status: Excess

GSA Number: 1–G–NY–0950–1
Comments: 2869 sq. ft., possible asbestos/lead paint.

North Carolina

USCG Station Bldgs.
Cape Hatteras
Buxton Co: Dare NC
Landholding Agency: GSA
Property Number: 54200720002
Status: Excess
GSA Number: 4–U–ND–0747A
Comments: 5 bldgs./11 Other structures, contamination.

North Dakota

North House
10951 County Road
Hannah Co: Cavalier ND 58239
Landholding Agency: GSA
Property Number: 54200720008
Status: Surplus
GSA Number: 7–X–ND–0515–1A
Comments: 1128 sq. ft. residence, off-site use only.

South House
10949 County Road
Hannah Co: Cavalier ND 58239
Landholding Agency: GSA
Property Number: 54200720009
Status: Surplus
GSA Number: 7–X–ND–0515–1B
Comments: 1128 sq. ft. residence, off-site use only.

North House
Highway 40
Noonan Co: Divide ND 58765
Landholding Agency: GSA
Property Number: 54200720010
Status: Surplus
GSA Number: 7–X–ND–0517–1A
Comments: 1564 sq. ft. residence, off-site use only.

South House
Highway 40
Noonan Co: Divide ND 58765
Landholding Agency: GSA
Property Number: 54200720011
Status: Surplus
GSA Number: 7–X–ND–0517–1B
Comments: 1564 sq. ft. residence, off-site use only.

North House
Rt. 1, Box 66
Sarles Co: Cavalier ND 58372
Landholding Agency: GSA
Property Number: 54200720012
Status: Surplus
GSA Number: 7–X–ND–0516–1B
Comments: 1228 sq. ft. residence, off-site use only.

South House
Rt. 1, Box 67
Sarles Co: Cavalier ND 58372
Landholding Agency: GSA
Property Number: 54200720013
Status: Surplus
GSA Number: 7–X–ND–0516–1A
Comments: 1228 sq. ft. residence, off-site use only.

House #1
10925 Hwy 28
Sherwood Co: Renville ND 58782
Landholding Agency: GSA
Property Number: 54200720014
Status: Surplus
GSA Number: 7–X–ND–0518–1B
Comments: 1228 sq. ft. residence, off-site use only.

House #2
10927 Hwy 28
Sherwood Co: Renville ND 58782
Landholding Agency: GSA
Property Number: 54200720015
Status: Surplus
GSA Number: 7–X–ND–0518–1A
Comments: 1228 sq. ft. residence, off-site use only.

North House
10913 Hwy 83
Westhope Co: Bottineau ND 58793
Landholding Agency: GSA
Property Number: 54200720016
Status: Surplus
GSA Number: 7–X–ND–0519–1B
Comments: 1218 sq. ft. residence, off-site use only.

South House
10909 Hwy 83
Westhope Co: Bottineau ND 58793
Landholding Agency: GSA
Property Number: 54200720017
Status: Surplus
GSA Number: 7–X–ND–0519–1A
Comments: 1218 sq. ft. residence, off-site use only.

Ohio

NIKE Site Cd–46
Felicity OH
Landholding Agency: GSA
Property Number: 31200740015
Status: Excess
GSA Number: 1–D–OH–0832
Comments: 8 bldgs., most recent use—Ohio Air Natl Guard site.

PFC Joe R. Hastings
Army Reserve Center
3120 Parkway Dr.
Canton OH 44708
Landholding Agency: GSA
Property Number: 54200840008
Status: Excess
GSA Number: 1–D–OH–835
Comments: 27,603 sq.ft./admin bldg. & vehicle maint. bldg., presence of asbestos/lead paint/radon/PCBs.

Oregon

3 Bldgs/Land
OTHR–B Radar
Cty Rd 514
Christmas Valley OR 97641
Landholding Agency: GSA
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Comments: 14,000 sq. ft. each/2626 acres, most recent use—radar site, right-of-way.

U.S. Customs House
220 NW 8th Ave.
Portland OR
Landholding Agency: GSA
Property Number: 54200840004
Status: Excess
GSA Number: 9–D–OR–0733
Comments: 100,698 sq. ft., historical property/National Register, most recent use—office, needs to be brought up to meet earthquake code and local bldg codes, presence of asbestos/lead paint.

Rhode Island

Former SSA Bldg.
Broad & Exchange Streets
Pawtucket RI
Landholding Agency: GSA
Property Number: 54200920008
Status: Excess
GSA Number: 1–G–RI–0518
Comments: 6254 sq. ft., most recent use—office.

Tennessee

NOAA Admin. Bldg.
456 S. Illinois Ave.
Oak Ridge TN 38730
Landholding Agency: GSA
Property Number: 54200920015
Status: Excess
GSA Number: 4–B–TN–0664–AA
Comments: 15,955 sq. ft., most recent use—office/storage/lab.

Texas

Bldgs. 5, 6, 7
Federal Center
501 West Felix Street
Ft. Worth Co: Tarrant TX 76115
Landholding Agency: GSA
Property Number: 54200640002
Status: Excess
GSA Number: 7–G–TX–0767–3
Comments: 3 warehouses with concrete foundation, off-site use only.

Border Patrol Station
Sanderson TX 79843
Landholding Agency: GSA
Property Number: 54200910006
Status: Excess
GSA Number: 7–X–TX–1097
Comments: 1500 sq. ft., most recent use—office/garage.

Washington

Blaine Parking Lot
SR 543
Blaine WA 98230
Landholding Agency: GSA
Property Number: 54200830028
Status: Excess
GSA Number: 9–G–WA–1242
Comments: 2665 sq. ft., border crossing.

Land

Arizona

Parking Lot
322 N 2nd Ave.
Phoenix AZ 85003
Landholding Agency: GSA
Property Number: 54200740007
Status: Surplus
GSA Number: AZ–6293–1
Comments: Approx. 21,000 sq. ft., parcel in OU3 study area for clean-up.

SRP Ditch
24th St. & Jones Ave.
Phoenix AZ 85040
Landholding Agency: GSA
Property Number: 54200840001
Status: Surplus
GSA Number: AZ–0849–AA
Comments: Approx. 4131 sq. ft. unimproved land, floodplain.

Salt River Project
Pecos/Alma School Road
#USBR–08–020

Chander AZ 85225
Landholding Agency: GSA
Property Number: 54200920001
Status: Surplus
GSA Number: 9–I–AZ–0850
Comments: Approx. 34,183 sq. ft., ranges from 10–20 ft. wide, very long and narrow.

California

Tract 1607
Lake Sonoma
Rockpile Rd.
Geyserville CA 85746
Landholding Agency: GSA
Property Number: 54200840011
Status: Surplus
GSA Number: 9–GR–CA–1504
Comments: Approx. 139 acres, northern portion not accessible because of steep slopes, rare manzanita species.

Connecticut

MYQ Outer Marker Facility
Enfield CT 06082
Landholding Agency: GSA
Property Number: 54200920004
Status: Surplus
GSA Number: 1–U–CT–0561–1A
Comments: 0.341 acres, only accessible via right of way easement.

Massachusetts

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Landholding Agency: GSA
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Comments: Approx 92 acres, entire parcel within MA Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program.

FAA Locator Antenna LOM
Coleman Road
Southhampton MA 01073
Landholding Agency: GSA
Property Number: 54200920005
Status: Excess
GSA Number: MA–0913–AA
Comments: 1.41 acres.

Michigan

Former Elf Comm. Facility
3041 County Road
Republic MI 49879
Landholding Agency: GSA
Property Number: 54200840012
Status: Excess
GSA Number: 1–N–MI–0827
Comments: 6.69 acres w/transmiter bldg, support bldg., gatehouse, endangered species.

Oregon

20 acres
Cow Hollow Park
Nyssa OR 97913
Landholding Agency: GSA
Property Number: 54200820007
Status: Excess
GSA Number: 9–I–OR–769
Comments: 20 acres w/shower/restroom, eligible for listing on Historic Register.

Pennsylvania

Approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Comments: Vacant land.

Texas

FAA Outer Marker 18 R/L VYN
1420 Lakeside Pkwy
Flower Mound TX 75028
Landholding Agency: GSA
Property Number: 54200820017
Status: Surplus
GSA Number: 7–U–TX–1090
Comments: 1.428 acres, radar facility, published incorrectly on 8/15/08 as available.

Unsuitable Properties

Building

California

Tract 114–04
Santa Monica NRA
Agoura CA 91301
Landholding Agency: Interior
Property Number: 61200930007
Status: Unutilized
Reasons: Extensive deterioration.

Trailers 4, 5, 6, 7, 9, 11, 12
National Park
Death Valley CA 92328
Landholding Agency: Interior
Property Number: 61200930008
Status: Unutilized
Reasons: Extensive deterioration.

Connecticut

Boathouse
USCG Academy
New London CT 06320
Landholding Agency: Coast Guard
Property Number: 88200930001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Florida

Tracts 105–45, 107–04
Timucuan Eco & Historic Preservation
Jacksonville FL
Landholding Agency: Interior
Property Number: 61200930009
Status: Excess
Reasons: Extensive deterioration.

Maine

3 Bldgs.
Acadia National Park
Hancock ME
Landholding Agency: Interior
Property Number: 61200930006
Status: Unutilized
Directions: 82390, 101723, 101724
Reasons: Extensive deterioration.

New York

Bldg. 53–A
Naval Support Unit
Saratoga Springs NY 12866
Landholding Agency: Navy
Property Number: 77200930013
Status: Excess
Reasons: Secured Area.

Tennessee

Bldg. 35801000
Fort Donelson National Battlefield
Dover TN 37058
Landholding Agency: Interior
Property Number: 61200930010
Status: Unutilized
Reasons: Extensive deterioration.

Texas

Excell Helium Plant
Masterson TX 79058
Landholding Agency: GSA
Property Number: 54200930006
Status: Surplus
GSA Number: 7–D–TX–772
Reasons: Extensive deterioration.

Bldgs. HB046, 0074
LBJ Natl Historic Park
Stonewall TX 78671
Landholding Agency: Interior
Property Number: 61200930011
Status: Excess
Reasons: Extensive deterioration.

Tracts 01–101, 01–104
LBJ Natl Historic Park
Johnson City TX 78636
Landholding Agency: Interior
Property Number: 61200930012
Status: Unutilized
Reasons: Extensive deterioration.

Land

Florida

Encroachment #34
Gulf Intracoastal Waterway
Perdido Key FL
Landholding Agency: GSA
Property Number: 54200920016
Status: Excess
GSA Number: 4–D–FL–1223–AC
Reasons: Floodway, Not accessible by road.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5291–N–04]

Privacy Act of 1974; Amendment to an Existing System of Records, Enterprise Income Verification (EIV), HUD/PIH–5

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of an amendment to an existing System of Records, Enterprise Income Verification (EIV), HUD/PIH–5.

SUMMARY: HUD is amending HUD/PIH–5 to reflect changes in the following sections, which impact participants and program administrators of the Public Housing, Disaster Housing Assistance, Housing Choice Voucher (HCV), Section 8 Moderate Rehabilitation programs; and the various rental assistance programs for the Office of Housing: Categories of Individuals Covered by the System, Categories of Records in the System, Purposes of the System, and

Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Users. These sections are revised to reflect the present status of the information contained in the system. A more detailed description of the present system is contained in the Supplemental Information section.

DATES: *Effective Date:* This proposal shall become effective, without further notice, *October 1, 2009,* unless comments are received during or before this period which would result in a contrary determination.

Comments Due Date: October 1, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For the Departmental Privacy Act Officer contact Donna Robinson-Staton, telephone number (202) 402–8073. Regarding records maintained in Washington, DC, for the Office of Public and Indian Housing (PIH), contact Nicole Faison, Office of Public Housing and Voucher Programs (OPHVP), Rental Housing Integrity Improvement Project (RHIIP) Manager and PIH EIV System Owner, telephone number (202) 402–4267; or David Sandler, EIV System Project Manager, telephone number (202) 475–8941. For the Office of Housing, contact Gail Williamson, Director of the Housing Assistance Policy Division, telephone number (202) 402–2473. [The above are not toll free numbers.] A telecommunications device for hearing-and speech-impaired persons (TTY) is available at (800) 877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: EIV currently supports public housing agencies (PHAs) that administer Public Housing, and Section 8 tenant-based rental assistance programs, and will in the near future, support PHAs that administer the Disaster Housing Assistance Program (DHAP); and private owners and management agents (O/ASs) who administer rental assistance programs for the Office of Housing (Housing) and contract administrators (CAs) under contract with HUD. EIV will contain income data for public housing, Section 8, and multifamily housing program participants, enabling program administrators to verify participant-reported income and identify households that may have under reported their household's annual income.

HUD developed the EIV system to reduce subsidy payment errors as a result of tenant under reporting of income to ensure that limited Federal resources serve as many eligible families as possible. EIV will facilitate more timely and accurate verification of tenant-reported income at the time of mandatory annual and interim reexamination of household income.

EIV will contain personal identifying information from HUD's Inventory Management System (IMS) formerly Public and Indian Housing Information Center (PIC) and Disaster Information System (DIS) within IMS; and HUD's Office of Housing's Tenant Rental Assistance Certification System (TRACS), such as Head of Households and household members' name, date of birth and Social Security Number (SSN), unit address, program information, and household income details as reported by the participant to the program administrator. These personal identifying data are extracted from IMS, DIS, and TRACS and imported into EIV. The system also contains household member(s) income details as reported by State and Federal agencies. HUD obtains income details through computer matching programs with the Department of Health and Human Services (HHS) and Social Security Administration (SSA).

On March 11, 2009, Section 239 of HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. McKinney Act of 1988, as amended, to include the Disaster Housing Assistance Program (DHAP) as a ''program'' of HUD for the purpose of income verifications and computer matching. Computer matching for participants of the Disaster Housing Assistance Program is expected to begin no sooner than October 1, 2009, unless comments are received which result in a contrary determination, or 40 days from the date a modified computer matching agreement is signed by HUD, SSA and HHS, whichever is later. As such, pursuant to the Computer Matching and Privacy Protection Act (CMPPA) of 1988, as amended, HUD is providing the public with notice of a modified computer matching program with HHS and SSA (as previously published at 73 FR 10046 and 74 FR10605, respectively), to include participants of DHAP administered by local PHAs.

Effective September 14, 2009, PHAs will have the ability to enter the following information into EIV:

1. Amount of debt owed by a former tenant to a PHA;
2. If applicable, indication of executed repayment agreement;
3. If applicable, indication of bankruptcy filing;
4. If applicable, the reason for any adverse termination of the family from a Federally assisted housing program.

This information will be used by HUD to create a national repository of families that owe a debt to a PHA and/or have been terminated from a Federally assisted housing program. This national repository will be available within the EIV system for all PHAs to access during the time of application for rental assistance. PHAs will be able to access this information to determine a family's suitability for rental assistance, and avoid providing limited Federal housing assistance to families who either: (1) Owe a debt to a PHA; or (2) have previously been unable to comply with HUD program requirements.

System Security Measures: The integrity and availability of data in EIV is important. Much of the data needs to be protected from unanticipated or unintentional modification. HUD restricts the use of this information to HUD approved officials, program administrators such as PHAs and O/ASs, and CAs under contract with HUD; thus, the data is protected accordingly.

Vulnerabilities and corresponding security measures include: (1) Only persons with Web Access Subsystem (WASS) User IDs and passwords may access EIV; (2) access to EIV is controlled using EIV's security module, which controls a user's access to particular modules based on the user's role and security access level; (3) User IDs are used to identify access to sensitive data by users; (4) data corruption/destruction-PHAs, O/As and CAs users do not have write access to databases that contain income information obtained by HUD from third parties. HUD users' write access is limited to user administration by authorized personnel. This will eliminate the risk of data destruction or corruption. (5) PHA users, as designated by the PHA's Executive Director or designee, will have the ability to enter debt owed and termination information of former program participants into EIV. Designated users have the ability to update and delete information as necessary. These designated users will be assigned a specific role in EIV to enable the entering of this data. Those

users without the assigned role to enter data into EIV will be able to only view information pertaining to families who owe a debt to a PHA or have been terminated from a PIH program.

Data Quality: PHAs and O/As submit management, building, unit, and family information into IMS and TRACS. Family information includes the families' names, SSNs, and dates of birth. When a PHA or O/A submits family data to IMS, or TRACS, the EIV system will validate each household member's identity. HUD will only transmit to the Department of Health and Human Services (HHS) for computer matching those tenant personal identifiers (*i.e.,* full name, SSN, and date of birth) of individuals age 18 and older, that have been validated by the Social Security Administration (SSA). If a household member's identity cannot be validated, EIV will (1) flag the household member record; (2) provide an error message to the PHA or O/A, informing the PHA or O/A to verify the household member's SSN, name, and/or date of birth; and (3) request the PHA or O/A to submit a corrected record (Form HUD–50058 or Form HUD–50059) into IMS, or TRACS. EIV will remove the invalidated household member record from computer matching request files.

This household member identity verification feature was established to help HUD maintain data quality and integrity and to support one of its strategic objectives to prevent fraud and abuse. This identity verification feature will (1) help confirm that those families entitled to benefits receive benefits, (2) ensure that income information is obtained of only validated individuals, (3) assist in limiting the duplication of benefits, and (4) help prevent the false application for benefits, thereby ensuring data quality.

Debt owed and termination information entered by PHAs may be challenged by the former program participant. If the PHA determines that an error has been made in entering the data, the designated users who have the ability to enter data into EIV, will update and delete erroneous information as necessary.

EIV will receive new hires (W–4), wage, employment, and unemployment benefit data from HHS' National Directory of New Hires (NDNH) database; and Social Security (SS) and Supplemental Security Income (SSI) benefit data from the Social Security Administration (SSA). This will allow PHAs, O/As, CAs to verify the income of tenants at the time of mandatory annual and/or interim reexaminations.

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to amend an existing Privacy System of Records, Enterprise Income Verification, HUD/PIH–5.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the amended record system. The system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Government Reform pursuant to paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Accordingly, this notice amends HUD/PIH–5 system of records for the Office of Public and Indian Housing's program administrators and accompanying routine uses to be submitted and accessed in the management of rental assistance housing programs by the Office of Public and Indian Housing.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: August 24, 2009.

Jerry E. Williams,

Chief Information Officer.

HUD/PIH–5

SYSTEM NAME:

Enterprise Income Verification (EIV).

SYSTEM LOCATIONS:

The files are maintained at the following locations:

1. U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; and

2. Lockheed Martin Corporation, located at 4701 Forbes Blvd., Lanham, MD 20706, will monitor access of any encrypted files containing social security and rent information (subject to the provisions of 26 U.S.C. 6103).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Families receiving rental housing assistance (now including Disaster Housing Assistance) via programs administered by the Department of Housing and Urban Development, Tribally Designated Housing Entities participating in the Section 8 program, PHAs and/or O/As and State agencies and PHAs acting as CAs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of unit address (subsidized property address), family composition, and income data obtained from PHAs and O/As. The system of records contains: Identification information such as names, dates of birth and SSNs for individuals; addresses; financial data such as tenant-reported income; employment, wage, and unemployment benefit data obtained from HHS and SS and SSI benefit data obtained from the SSA; annual income discrepancies as a result of the comparison of tenant-reported income to actual income as reported by the HHS and SSA; failed identity verification report; multiple subsidies report, which identifies families who may be receiving multiple rental assistance in various HUD rental assistance program; new hires report, which identifies family members who have started a new job; deceased tenants report, which identifies family members who are deceased. Effective September 2009, PIH's EIV system will contain the following new records: Repository of debts owed to PHAs and adverse terminations of former program participants, as reported to HUD by program administrators; and an immigration report, which will identify the immigration status of program participants as reported by PHAs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pursuant to the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, as amended, and Section 303(i) of the Social Security Act, HUD and HUD-funded PHAs may request wage and claim data from State Wage Information Collection Agencies (SWICAs), also now known as State Workforce Agencies (SWAs), responsible for administering State unemployment laws.

On October 1, 1994, Section 542(a)(1) of HUD's 1998 Appropriation Act, eliminated a sunset provision to Section 303(i) of the Social Security Act, effectively making permanent the authority requiring State agencies to disclose wage and claim information to HUD and PHAs. On January 23, 2004, Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) was amended to allow HUD to obtain income information from the (National Directory of New Hires) NDNH database (owned by the U.S. Department of Health and Human Services (HHS)) and disclose this information to PHAs for the purpose of verifying employment and income of rental housing program participants. HUD may disclose NDNH data to a private owner, management agent, and contract administrator under contract with HUD based on (1) an evaluation of the costs and benefits of disclosures made to PHAs, and (2) the adequacy of

measures used to safeguard the security and confidentiality of information so disclosed. Disclosure of NDNH data to O/As and CAs is only as needed for verifying the employment and income of multifamily housing program participants. On March 11, 2009, Section 239 of HUD's 2009 Appropriations Act modified Section 904 of the Stewart B. Mckinney Act of 1988, as amended, to include the Disaster Housing Assistance Program (DHAP) as a ''program'' of HUD for the purpose of income verifications and computer matching. The Housing and Community Development Act of 1987 authorizes HUD to require applicants for and participants in HUD-administered rental housing assistance programs to disclose to HUD their SSNs as a condition of initial or continued eligibility for participation in these HUD programs. The Omnibus Budget Reconciliation Act of 1993 (Budget Reconciliation Act) authorizes HUD to request from SSA Federal tax data, as prescribed in section 6103(l)(7) of title 26 of the United States Code (Internal Revenue Code).

PURPOSES:

The primary purpose of EIV is to allow PHAs, O/As, and CAs to verify tenant-reported income, identify unreported income sources and/or amounts received by program participants, and identify substantial annual income discrepancies amongst households that receive HUD-provided rental assistance through programs administered by PIH and Housing. The first release of EIV was successfully implemented on August 16, 2004. EIV is a simple, Internet-based integrated system, which enables PHA users, HUD personnel, O/As, and CAs to access a database of tenant information via their Web browser. EIV will aid HUD and entities that administer HUD's assisted housing programs in: (a) Increasing the effective distribution of rental assistance to individuals that meet the requirements of Federal rental assistance programs, (b) detecting abuses in assisted housing programs, (c) taking administrative or legal actions to resolve past and current abuses of assisted housing programs, (d) deterring abuses by verifying the income of tenants at the time of annual and interim reexaminations via the use of electronic income data received from the HHS and SSA, (e) evaluating the effectiveness of income discrepancy resolution actions taken by PHAs, O/As and CAs for some of HUD's rental assistance programs, and (f) reducing administrative burden of obtaining written or oral third party verification (when the tenant does not dispute information provided by EIV. EIV is a management information system that contains tools to help: (1) Improve the income verification process, (2) monitor incidents of potential tenant under reporting of household income, (3) produce management reports, (4) reduce duplicate rental assistance, (5) reduce overpayment of housing assistance payments of deceased single member households, and (6) conduct risk assessments. The EIV system serves as a repository for automated information used when comparing family income data reported by recipients of Federal rental assistance to income data received from external sources (*e.g.,* HHS and SSA). Records in TRACS, IMS, and EIV are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to the uses cited in the section of this document titled ''Purposes'', other routine uses may include:

1. To Federal, State, and local agencies (*e.g.,* State agencies administering the State's unemployment compensation laws, State welfare and food stamp agencies, U.S Office of Personnel Management, U.S. Postal Service, U.S. Department of Defense, U.S. Department of Health and Human Services, and U.S. Social Security Administration): to verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs through HUD's tenant income computer matching program;

2. To individuals under contract to HUD or under contract to another agency with funds provided by HUD: for the preparation of studies and statistical reports directly related to the management of HUD's rental assistance programs, to support quality control for tenant eligibility efforts requiring a random sampling of tenant files to determine the extent of administrative errors in making rent calculations, eligibility determinations, etc., and for processing certifications/re-certifications;

3. To PHAs, O/As, and CAs: to verify the accuracy and completeness of tenant data used in determining eligibility and continued eligibility and the amount of housing assistance received;

4. To PHAs, O/As, and CAs: to identify and resolve discrepancies in tenant data; and

5. To PHAs: information related to debts owed to PHAs and participant's termination from a PIH program, to determine an applicant's suitability for tenancy in a PIH housing program.

6. To researchers affiliated with academic institutions, with not-for-profit organizations, or with Federal, State or local governments, or to policy researchers: without individual identifiers—name, address, SSN: for the performance of research and statistical activities on housing and community development issues.

7. To HUD staff, HUD contractors, independent public auditors and accountants, PHAs, and CAs for the purpose of conducting oversight and monitoring of program operations to determine compliance with applicable laws and regulations, and financial reporting requirements.

8. To the Federal Emergency Management Agency (FEMA): to identify existing families which participate in a HUD rental assistance program and are currently receiving housing assistance. HUD may provide FEMA with the following information about the HUD-assisted family: (1) The PHA name, address and contact information currently assisting the family, (2) the effective date of the last transaction the PHA conducted with the family; (3) family composition information, including household member names and date of births; and any other information from the form HUD–50058, which may assist FEMA in determining eligibility of assistance.

9. *Additional Disclosure for Purposes of Facilitating Responses and Remediation Efforts in the Event of a Data Breach.* A record from a system of records maintained by this Department may be disclosed to appropriate agencies, entities, and persons when:

1. The Department suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

2. The Department has determined 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 systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and,

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's

efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES FOR STORING, RETRIEVING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Records are stored manually in family case files and electronically in office automation equipment. Records are stored on HUD computer servers for field office, PHAs', and O/AS' access via the Internet to:

1. Obtain SS and SSI data that are not subject to provisions of 26 U.S.C. 6103;
2. Obtain employment, wage and unemployment compensation data; and
3. Obtain the following reports:

a. Failed Verification.
b. Failed EIV–Prescreening.
c. Identity Verification.
d. Income Discrepancy.
e. New Hires.
f. Deceased Tenants.
g. Multiple Subsidy.
h. Debts Owed to PHAs and Termination.

Note: Software in EIV precludes the transfer of any data subject to 26 U.S.C. 6103 to unencrypted media.

RETRIEVABILITY:

Records may be retrieved by computer search of indices by the Head of Household's name, date of birth, and/or SSN of an existing HUD program participant.

Note: A user's search capability is limited to only those program participants within the user's jurisdiction and assigned to his or her User ID.

SAFEGUARDS:

Records are maintained at the U.S. Department of Housing and Urban Development in Washington, DC with limited access to those persons whose official duties require the use of such records. Computer files and printed listings are maintained in locked cabinets. Printed listings include masked dates of birth and SSNs. Computer terminals are secured in controlled areas, which are locked when unoccupied. Access to automated records is limited to authorized personnel who must use a password to gain access to the system. HUD will safeguard the SSN, income, and personal identifying information obtained pursuant to 26 U.S.C. 6103(l)(7)(A) and (B) in accordance with 26 U.S.C. 6103(p)(4) and the IRS's ''Tax Information Security Guidelines for Federal, State and Local Agencies,'' Publication 1075 (Revised October 2007).

RETENTION AND DISPOSAL:

Handbook 2228.2, appendix 14, item 25. EIV-reported income information is retained for the duration of tenancy plus three years from the end of program participation date or move-out date. Electronic data is disposed of by erasing data from all media types. Data retained in paper format is destroyed by shredding or burning. Computerized family records are maintained in a password-protected environment. If information is needed for evidentiary purposes, documentation will be referred to the HUD Office of Inspector General (OIG) in Washington, DC or other appropriate Federal, State or local agencies charged with the responsibility of investigating or prosecuting violators of Federal law. Documents referred to HUD's OIG will become part of OIG's Investigative Files. Records will be retained and disposed of in accordance with the General Records Schedule included in HUD.

Debts owed to PHAs and termination information is retained for a period of ten years from the end of participation date.

SYSTEM MANAGERS AND ADDRESSES:

Office of Public and Indian Housing (PIH): Nicole Faison, PIH EIV System Owner. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410; David Sandler, PIH EIV System Project Manager. Department of Housing and Urban Development, 550 12th Street SW., First Floor—Desk 1304, Washington, DC 20410.

Office of Housing: Gail Williamson, Housing EIV System Owner. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6138, Washington, DC 20410. Lanier Hylton, Housing EIV System Project Manager. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6140, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about them, or those seeking access to such records, should address inquiries to Donna Robinson-Staton, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2256, Washington, DC 20410. For written request provide verification of your identity by stating your full name, current address, social security number, date of birth, and place of birth. Your verification of identity must include your original signature and must be notarized.

CONTESTING RECORD PROCEDURES:

Employment and wage information reported in EIV originates from the employer. The employer reports this information to the local State Workforce Agency (SWA), who in turn, reports the information to the NDNH database. If a participant of a HUD rental assistance program disputes this information, he or she should contact the employer directly in writing to dispute the employment and/or wage information and request that the employer correct erroneous information. If employer resolution is not possible, the program participant should contact the local SWA for assistance.

Unemployment benefit information reported in EIV originates from the local State Workforce Agency (SWA). If a participant of a HUD rental assistance disputes this information, he or she should contact the SWA directly, in writing to dispute the unemployment benefit information, and request that the SWA correct erroneous information.

SS and SSI benefit information reported in EIV originates from the SSA. If a participant of a HUD rental assistance program disputes this information, he or she should contact the SSA at (800) 772–1213 or visit your local SSA office. SSA office information is available in the government pages of your local telephone directory or online at *http://www.socialsecurity.gov.*

Debts owed to PHAs and termination information is reported to HUD by the PHA. If a current or former participant of a HUD rental assistance program disputes this information, he or she should contact the PHA directly in writing to dispute this information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV.

For all other information, procedures for the amendment or correction of records are located at 24 CFR parts 16.8. and 16.9.

RECORD SOURCE CATEGORIES:

PIH and Housing may receive data from HUD field office staff, Federal Government agencies, State and local agencies, private data sources, owners and management agents, PHAs, and contract administrators. PHAs and O/As routinely collect personal and income data from participants in and applicants for HUD's public and assisted housing programs. The data collected by PHAs and O/As is entered into the PIC and TRACS system, respectively, online via

the system itself, via PHA or O/A-owned software, or via HUD's Family Reporting Software (FRS). Data from PIC and TRACS is imported into EIV and used to create request files for computer matching programs.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E9–21087 Filed 8–31–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Call for Nominations for Appointment of Primary and Alternate Representatives, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior; and U.S. Forest Service, Agriculture.

ACTION: Notice of call for nominations for appointment or reappointment of primary representatives, and appointment or reappointment of alternate representatives to occupy various positions on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee.

SUMMARY: This notice constitutes an open call to the public to submit nomination applications for positions on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee.

DATES: Nomination applications must be submitted to the address listed below no later than November 30, 2009.

ADDRESSES: Santa Rosa and San Jacinto Mountains National Monument Office, Attn: National Monument Manager, Advisory Committee Nomination Application, 1201 Bird Center Drive, Palm Springs, California 92262.

FOR FURTHER INFORMATION CONTACT: Jim Foote, National Monument Manager, Santa Rosa and San Jacinto Mountains National Monument, telephone (760) 833–7136; e-mail *jfoote@ca.blm.gov.*

SUPPLEMENTARY INFORMATION:

Primary Representatives

- Representative of the City of Palm Springs; term will begin on March 16, 2010 and expire March 16, 2013.
- Representative of the City of La Quinta; term will begin on March 16, 2010 and expire March 16, 2013.
- Representative of the California Department of Parks and Recreation or California Department of Fish and Game; term will begin March 16, 2010 and expire March 16, 2013.
- Representative of a local conservation organization; term will begin March 16, 2010 and expire March 16, 2013.
- Representative of a local developer or builder organization; term will begin March 16, 2010 and expire March 16, 2013.
- Representative of the City of Cathedral City; term will begin on date of appointment and expire July 21, 2012.
- Representative of the City of Indian Wells; term will begin on date of appointment and expire July 21, 2012.
- Representative of the County of Riverside, California; term will begin on date of appointment and expire July 21, 2012.
- Representative of the Coachella Valley Mountains Conservancy; term will begin on date of appointment and expire July 21, 2012.
- Representative of the Winter Park Authority; term will begin on date of appointment and expire July 21, 2012.

Alternate Representatives

- Alternate representative of the City of Palm Springs; term will begin on March 16, 2010 and expire March 16, 2013.
- Alternate representative of the City of La Quinta; term will begin on March 16, 2010 and expire March 16, 2013.
- Alternate representative of the California Department of Parks and Recreation or California Department of Fish and Game; term will begin March 16, 2010 and expire March 16, 2013.
- Alternate representative of a local conservation organization; term will begin March 16, 2010 and expire March 16, 2013.
- Alternate representative of a local developer or builder organization; term will begin March 16, 2010 and expire March 16, 2013.
- Alternate representative of the City of Cathedral City; term will begin on date of appointment and expire July 21, 2012.
- Alternate representative of the City of Indian Wells; term will begin on date of appointment and expire July 21, 2012.
- Alternate representative of the County of Riverside, California; term will begin on date of appointment and expire July 21, 2012.
- Alternate representative of the Coachella Valley Mountains Conservancy; term will begin on date of appointment and expire July 21, 2012.
- Alternate representative of the Winter Park Authority; term will begin on date of appointment and expire July 21, 2012.
- Alternate representative of the City of Palm Desert; term will begin on date of appointment and expire December 16, 2011.
- Alternate representative of the Pinyon Community Council; term will begin on date of appointment and expire December 16, 2011.

In accordance with the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Pub. L. 106–351), the Secretary of the Interior and the Secretary of Agriculture have jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument under the provisions of the Federal Advisory Committee Act. The purpose of the National Monument Advisory Committee (MAC) is to advise the Secretaries with respect to implementation of the National Monument Management Plan.

The MAC holds public meetings at least once per year. The Designated Federal Official (DFO), or his/her designee, may convene additional meetings as necessary. All MAC members are volunteers serving without pay. Members of the MAC may be reappointed upon expiration of the member's current term.

All applicants must be citizens of the United States. Members are appointed by the Secretary of the Interior with concurrence by the Secretary of Agriculture. Applicants must be qualified through education, training, knowledge, or experience to give informed advice regarding an industry, discipline, or interest to be represented.

There is no limit to the number of nomination applications which may be submitted for each open position. Current MAC appointees may submit an updated nomination application for reappointment. Any individual may nominate himself or herself for appointment. Completed nomination applications should include letters of reference and/or recommendations from the represented interests or organizations, and any other information explaining the nominee's qualifications (e.g., resume, curriculum vitae).

Nomination application packages are available at the Santa Rosa and San Jacinto Mountains National Monument Office, 1201 Bird Center Drive, Palm Springs, California; through the Santa Rosa and San Jacinto Mountains National Monument Web page at *http://www.blm.gov/ca/st/en/fo/palmsprings/santarosa/*

mac_nominations.html; via telephone request at (760) 833–7100; by written request from the Santa Rosa and San Jacinto Mountains National Monument Manager at the following address: Santa Rosa and San Jacinto Mountains National Monument Office, Attn: National Monument Manager, Advisory Committee Nomination Application Request, 1201 Bird Center Drive, Palm Springs, California 92262; or through an e-mail request at *jfoote@ca.blm.gov.*

Each application package includes forms from the U.S. Department of the Interior and U.S. Department of Agriculture. All submitted nomination applications become the property of the Department of the Interior, Bureau of Land Management, Santa Rosa and San Jacinto Mountains National Monument, and will not be returned. Nomination applications are good only for the current open public call for nominations.

John R. Kalish,

Field Manager, Palm Springs-South Coast Field Office, California Desert District, Bureau of Land Management.

Greg Casselberry,

Acting District Ranger, San Jacinto Ranger District, San Bernardino National Forest, U.S. Forest Service.

[FR Doc. E9–21054 Filed 8–31–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Federal Interagency Steering Committee on Multimedia Environmental Modeling

AGENCY: U.S. Geological Survey (USGS), Department of the Interior (DOI).

ACTION: Notice of open meeting.

SUMMARY: The annual public meeting of the Federal Interagency Steering Committee on Multimedia Environmental Modeling (ISCMEM) will convene to discuss some of the latest developments in environmental modeling applications, tools and frameworks, as well as new operational initiatives for FY 2010 among the participating agencies.

Dates of Meeting: October 13–15, 2009.

Place: Two White Flint North (TWFN) Auditorium, Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852.

Time: 9 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Pierre D. Glynn, ISCMEM Chair, U.S. Geological Survey, National Research Program, Branch of Regional Research, Eastern Region, 12201 Sunrise Valley Drive, Mail Stop 432, Reston, VA 20192. TEL 703–648–5823. FAX 703–648–5857. *pglynn@usgs.gov*.

SUPPLEMENTARY INFORMATION: *Background:* Nine Federal agencies have been cooperating under a Memorandum of Understanding (MOU) on the research and development of multimedia environmental models. The MOU, which was revised in 2006, continues an effort that began in 2001. It establishes a framework for facilitating cooperation and coordination among the following agencies (the specific research organization within the agency is in parenthesis): National Science Foundation; U.S. Army Corps of Engineers (Engineer Research and Development Center); U.S. Department of Agriculture (Natural Resources Conservation Service); U.S. Department of Energy (Office of Biological and Environmental Research); U.S. Environmental Protection Agency; U.S. Geological Survey; U.S. National Oceanographic and Atmosphere Administration; U.S. Nuclear Regulatory Commission (Office of Nuclear Regulatory Research); and U.S. Bureau of Reclamation. These agencies are cooperating and coordinating in the research and development (R&D) of multimedia environmental models, software and related databases, including development, enhancements, applications and assessments of site specific, generic, and process-oriented multimedia environmental models as they pertain to human and environmental health risk assessment. Multimedia model development and simulation supports interagency interests in risk assessment, uncertainty analyses, water supply issues and contaminant transport.

Purpose of the Public Meeting: The annual public meeting and workshop provides an opportunity for the scientific community, other Federal and State agencies, and the public to be briefed on ISCMEM activities and their initiatives for the upcoming year, and to discuss technological advancements in multimedia environmental modeling.

Proposed Agenda: The ISCMEM Chair will open the meeting with a brief overview of the goals of the MOU and an update on current activities of ISCMEM. This introduction will be followed by a series of invited presentations starting on Tuesday morning, Oct 13, and ending on Thursday afternoon, Oct 15. A detailed agenda with presentation titles and speakers will be posted on the MOU public Web site: *http://www.environmental-modeling.org*. The topics covered will include: Environmental modeling frameworks, databases and cyberinfrastructure, community modeling efforts, parameter estimation, uncertainty and sensitivity analyses, optimization modeling, reactive transport modeling, watershed and distributed water quality modeling, modeling of ecosystem services and ecosystem functions.

Meeting Access: The auditorium of the U.S. Nuclear Regulatory Commission Headquarters building at 11545 Rockville Pike, Rockville, MD is across the street from the White Flint Metro stop. The most convenient transportation to the meeting venue is via Metro since there is extremely limited on-street parking. Please take Metro to the White Flint Metro stop on the Red Line. To obtain access to the auditorium, all visitors must register with NRC security and have a valid photo-identification card.

Map location for White Flint METRO Stop adjacent to NRC Headquarters is: *http://www.wmata.com/rail/maps/map.cfm#*.

Pierre D. Glynn,

Chair, Federal Interagency Steering Committee on Multimedia Environmental Modeling.

[FR Doc. E9–21032 Filed 8–31–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 25, 2009, the United States Department of Justice, on behalf of the U.S. Environmental Protection Agency (''EPA''), lodged with the United States District Court for the Eastern District of Tennessee a consent decree with defendant Bowater Incorporated in the case of *United States* v. *Bowater Incorporated* (1:09–cv–00223). On the same day, the United States filed a Complaint pursuant to the Federal Clean Air Act, 42 U.S.C. 7413 (the ''Act'') alleging violations of the Act at Bowater's Calhoun, Tennessee pulp and paper mill. Under the Consent Decree, Bowater will seek an amended State operating permit that makes various changes to Bowater's operations and provides new emission limits. Bowater also agrees that a penalty in the amount of $30,000 shall be allowed as a pre-petition general unsecured claim in the bankruptcy case of *In re Bowater Inc.,* No. 09–11311 (KJC), pending in the United States Bankruptcy Court for the District of Delaware.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the consent decree between the United States and Bowater, DOJ Ref. No. 90–5–2–1–08852.

The proposed consent decree may be examined at EPA's office, 61 Forsyth Street, Atlanta, GA 30303. During the public comment period, the Settlement 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 Settlement 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 $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20950 Filed 8–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 20, 2009, a proposed Consent Decree in *United States and Louisville Metro Air Pollution Control District* v. *D.D. Williamson & Company, Inc.* Civil Action No. 3:09 cv 633 was lodged with the United States District Court for the Western District of Kentucky (Louisville Division).

In this action both the United States and Louisville Metro Air Pollution Control District (''District'') sought civil penalties and injunctive relief from D.D. Williamson & Company, Inc. (''D.D. Williamson'') for its violations of the Clean Air Act (the ''Act'') and its implementing regulations. The consent decree obligates D.D. Williamson to pay $600,000 in civil penalties which will be divided equaling between the United States and the District. Additionally, D.D. Williamson is obligated pursuant to the consent decree to: (1) Hire an independent engineering consultant to conduct a full hazard operability study of its manufacturing operations; (2) implement the study's recommendations; and (3) train its managers in process-hazard assessment techniques.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this proposed settlement. 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. *D.D. Williamson & Company, Inc.* Civil Action No. 3:09 cv 633, D.J. Ref. 90–5–2–1–08538.

The consent decree may be examined at the United States Attorney's Office, Western District of Kentucky, 510 W. Broadway, Louisville, KY 40202, ATTN: Jay Gilbert, and at U.S. EPA Region 4, at 61 Forsyth Street, Atlanta, GA 30303, ATTN: Ellen Rouch. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $9.25 payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–20989 Filed 8–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsemi Corporation; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the Central District of California in *United States* v. *Microsemi Corporation,* Civil Action No. 8:09–CV–00275–AG–AN. On December 18, 2008, the United States filed a Complaint alleging Microsemi Corporation's July 14, 2008 acquisition of the assets of Semicoa violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2. The United States alleged that this acquisition enabled Microsemi to eliminate or reduce competition in the development, manufacture, and sale of certain small signal transistors and ultrafast recovery rectifier diodes used in military and space programs. The proposed Final Judgment, filed on August 20, 2009, requires that Microsemi divest all of the assets it acquired from Semicoa. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the Central District of California, Southern Division. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. In order to comply with publication criteria for the **Federal Register**, please provide comments in an electronic word processing format (preferably Word Perfect or Microsoft Word). Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust

Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

J. Robert Kramer, II,

Director of Operations and Civil Enforcement.

In the United States District Court for the Eastern District of Virginia Alexandria Division

United States of America, Plaintiff, V. Microsemi Corporation, Defendant. Civil Action No.: 1:08cv1311, Judge: Trenga, Anthony J., Date: December 18, 2008

Verified Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain a temporary restraining order, preliminary injunction, and equitable and other relief against defendant Microsemi Corporation (''Microsemi'') to remedy the harm to competition caused by Microsemi's acquisition of assets of Semicoa, Inc. (''Semicoa''). The United States alleges as follows:

I. Nature of Action

1. This lawsuit challenges Microsemi's July 14, 2008 acquisition of substantially all of the assets of Semicoa, which has significantly harmed competition in the development, manufacture and sale of certain specialized high reliability electronic components used in aerospace and military applications. The transaction eliminated all competition for several types of transistors used in such applications—known as JANS and JANTXV small signal transistors—and substantially lessened competition for one type of diode used in such applications—known as JANS and JANTXV 5811 diodes. The high reliability transistors and diodes affected by the transaction are manufactured to exacting standards to ensure high performance under the most demanding conditions, subject to a U.S. government system of qualification and certification that is relied upon to assure the required degree of reliability. These components are used by customers that include the military services and the national security agencies of the United States in a wide range of critical applications in space, in the air, on land, and on and under the sea. The largest and most complex military applications ever designed, ranging from satellites to submarines, depend on these components. Civilian space projects ranging from communications satellites to the spacecraft under development to return astronauts to the moon also require these components. Because failure of even a single one of these components could result in the failure of a vital, multibillion dollar mission—and potentially cost the lives of American servicemen and women and astronauts—components with lesser degrees of reliability cannot be substituted for the products at issue in this case.

2. The JANTXV and JANS small signal transistors and the JANTXV and JANS 5811 diodes at issue in this case are hereinafter referred to collectively as the ''relevant products.'' Through its acquisition of the Semicoa assets, Microsemi reduced the number of suppliers of JANTXV and JANS small signal transistors from two to one, and thereby acquired monopolies in the development, manufacture and sale of those products. The acquisition also substantially reduced competition for JANTXV and JANS 5811 diodes by terminating Semicoa's attempt to enter into the manufacture and sale of these diodes. The acquisition has thus created monopolies in the development, manufacture and sale of JANTXV and JANS small signal transistors, and has substantially lessened competition in the development, manufacture and sale of all relevant products.

3. As a result of the transaction, prices for the relevant products have increased and likely will continue to increase, delivery times have become less reliable, and terms of service likely will become less favorable. Accordingly Microsemi's acquisition of the Semicoa assets violated Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2.

II. Jurisdiction and Venue

4. The United States brings this action against defendant Microsemi under Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain Microsemi from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2.

5. Microsemi develops, manufactures and sells the relevant products in the flow of interstate commerce. Microsemi's activities in developing, manufacturing and selling the relevant products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action and over the defendant pursuant to Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, and 28 U.S.C. 1331, 1337(a), and 1345.

6. Venue is proper in this district pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(c), and venue is proper in this Division pursuant to Local Rule 3(C). Defendant is a corporation that transacts business within this judicial district and Division, including by making sales to customers located within this judicial district and Division.

III. Parties to the Transaction

7. Microsemi is a Delaware corporation with its principal place of business in Irvine, California. Microsemi's sales were approximately $514 million in fiscal year 2008. Microsemi manufactures a range of high reliability semiconductors, including JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes. Microsemi's facilities for the manufacture of the relevant products are located in Massachusetts, California and Arizona. Microsemi's relevant products are shipped to customers throughout the United States, represent a regular, continuous and substantial flow of interstate commerce, and have a substantial effect upon interstate commerce.

8. Semicoa was a California corporation with its principal place of business in Costa Mesa, California. Semicoa's sales in the United States were approximately $14.7 million in 2007. Prior to the acquisition, Semicoa's products included a range of high reliability semiconductors. Semicoa's facilities for the manufacture of the relevant products were located in Costa Mesa, California. Its relevant products were shipped to customers throughout the United States and represented a regular, continuous and substantial flow of interstate commerce and had a substantial effect upon interstate commerce. After the sale of the high reliability semiconductor assets to Microsemi, the remainder of the Semicoa business was renamed Array Optronics, Inc..

IV. The Transaction

9. On July 14, 2008, Microsemi and Semicoa completed an asset sale by which Microsemi acquired from Semicoa all of its business engaged in the development, manufacture and sale of the relevant products. Microsemi announced plans to release most of Semicoa's employees and to relocate its operations within a year to Microsemi facilities.

V. Trade and Commerce

The Relevant Product Markets

10. Transistors and diodes are semiconductor devices used to control the flow of electric current. In their simplest forms, transistors can be viewed as switches and diodes can be viewed as one-way valves. Both products begin as silicon wafers produced in a furnace, typically referred to as a foundry. They are then cut into small sections known as dies. These dies are packaged in various ways into transistors and diodes.

11. Small signal transistors are a class of transistors commonly used in communications and other signal processing applications. Small signal transistors operate at low power levels and are used to amplify electrical signals in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Small signal transistors are produced using equipment, processes and skill sets specific to this type of transistor. Other types of transistors have different characteristics and cannot perform the tasks required of small signal transistors. A small but significant increase in the price of small signal transistors would not cause customers to switch to other types of transistors.

12. Rectifier diodes are a class of diodes also commonly used in communications and other signal processing applications. Rectifier diodes operate at low power levels and are used to convert alternating current to direct current in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Ultrafast recovery rectifier diodes, of which the 5811 type (''5811 diode'') is among the most common, are distinguished from other rectifier diodes by their extremely high alternating speeds, which minimize power loss and waste heat generation. Their ability to perform efficiently and without generating excess heat is especially important in applications

such as satellites and missiles, where power availability is strictly limited and heat dissipation is challenging. The 5811 diode performs a specific set of functions not performed by other ultrafast recovery rectifier diodes; while there are other types of ultrafast recovery rectifier diodes, those diodes have different characteristics and cannot perform the functions required of 5811 diodes. A small but significant increase in the price of 5811 diodes would not cause customers to switch to other types of diodes.

13. Highly reliable performance under demanding conditions is absolutely essential in military and space systems, where failure of a single component could result in failure of the mission. To ensure reliability and proper performance, production of these components for use in United States military and space applications is supervised by the Defense Supply Center Columbus (''DSCC''), a component of the Department of Defense. DSCC maintains a list of qualified components and their suppliers generally known as the Qualified Manufacturers List, or QML. While the QML is specifically intended for reference by military contractors, civilian space system manufacturers also require highly reliable components for use in a demanding environment, and therefore make use of the QML system and specify QML qualified components.

14. Products listed on the QML are organized into ''slash sheets,'' which denote groups of components with similar characteristics. Microsemi and Semicoa were the only manufacturers on the QML slash sheets for small signal transistors. This Complaint hereinafter uses the term ''small signal transistors'' to describe the products on these slash sheets.

15. DSCC grants certifications and qualifications for different grades of QML components, known as Joint Army-Navy categories. These grades in general represent different levels of reliability. The highest reliability grade is Joint Army-Navy Space (''JANS''); one level below JANS is Joint Army-Navy Technical Exchange-Visual Inspection (''JANTXV''). There are two grades below JANTXV, but the distinction between those grades and JANTXV is not as stark as between JANTXV and JANS. Therefore, the term JANTXV will be used to refer to all QML grades other than JANS.

16. Manufacturers pursuing JANTXV qualification for their components must be audited by DSCC. DSCC audits the manufacturer's facility, including fabrication, assembly and testing processes. If satisfied that the manufacturer is able to produce consistently reliable components at the highest levels of quality and performance, DSCC will issue a certification for those processes and authorize production of a particular component for qualification testing. The manufacturer produces a sample lot and submits test results to DSCC. Once satisfied with the manufacturer's test results—which may take several rounds of submissions and required corrections—DSCC will place the particular component from that manufacturer on the QML with a JANTXV qualification.

17. JANS grade products are required by customers for systems that demand the utmost reliability, such as satellites and nuclear missile systems. Components used in space must be of the highest quality and performance, because the space environment exposes components to extremes of temperature, pressure, radiation, and vibration during launch. Moreover, because failures in space are generally beyond reach of repair, these components must be extremely reliable.

18. Thus, while JANS components may perform functions similar to JANTXV components, obtaining JANS certification requires extensive additional qualification and testing beyond that required to obtain JANTXV certification. Each step in the manufacture of each JANS product must be thoroughly documented to ensure traceability in the event of a manufacturing defect. In addition, suppliers of JANS products must undergo far more demanding ongoing manufacturing and testing requirements than suppliers of other QML components. As a result, JANS components are regarded by buyers as being substantially more reliable than JANTXV components and are much more expensive than JANTXV components.

19. Components for use in commercial applications differ substantially from their JANTXV or JANS counterparts. JANTXV and JANS components are produced to very narrow tolerances. Commercial components, in contrast, are produced to much wider tolerances and lack the extensive production control, testing and documentation of JANTXV and JANS components. Moreover, commercial components are often encased in plastic, whereas JANTXV and JANS components are hermetically sealed in glass or metal cases, a far more expensive and demanding process that ensures greater reliability. Because of these significant differences in production and quality control, JANTXV and JANS components are much more reliable and substantially more expensive than commercial components.

20. Customers determine whether their projects require commercial grade, JANTXV, or JANS components. Those customers that choose JANTXV or JANS components need their reliability and assured performance characteristics, as evidenced by their willingness to pay the much higher cost of these components compared to commercial grade components.

21. Commercial grade components lack the reliability and assured performance of JANTXV components because they have not been produced following the thorough and reliable procedures mandated by DSCC for JANTXV components. While extensive testing of commercial grade components might reduce the risk of failure posed by the use of such components, such testing would be costly and time consuming. It would delay the project, some degree of risk would still remain, and the cost associated with such extensive testing in practice would make use of the commercial grade far more costly than use of a JANTXV component. Customers therefore do not consider the cost or availability of commercial grade components when designing systems requiring JANTXV components.

22. Because JANS components are much more expensive than JANTXV components, customers whose needs can be met with JANTXV components have no economic incentive to substitute JANS components.

23. A small but significant increase in the price of JANTXV small signal transistors would not cause customers to substitute commercial grade small signal transistors or JANS small signal transistors to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANTXV small signal transistors is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

24. A small but significant increase in the price of JANTXV 5811 diodes would not cause customers to substitute commercial grade 5811 diodes or JANS 5811 diodes to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANTXV 5811 diodes is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

25. Customers specifying JANS small signal transistors and JANS 5811 diodes for their projects will not substitute JANTXV components for JANS components because they do not have the extra reliability of JANS components, which results from the much more demanding and extensive testing and process control required of JANS components. While extensive testing of JANTXV components might reduce the risk of failure posed by the use of such components, such testing would be costly and time consuming. It would delay the project, some degree of risk would still remain, and the cost associated with such extensive testing in practice would make use of the JANTXV component far more costly than use of a JANS component. Thus, when JANS parts are available, customers do not consider JANTXV components substitutes when designing systems requiring JANS components or purchasing components to build such systems. Because commercial grade components are of even lower quality, customers specifying JANS components also will not substitute commercial components.

26. A small but significant increase in the price of JANS small signal transistors would not cause customers to substitute commercial grade or JANTXV small signal transistors to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANS small signal transistors is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

27. A small but significant increase in the price of JANS 5811 diodes would not cause customers to substitute commercial grade or JANTXV 5811 diodes to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANS 5811 diodes is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing

the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

28. To the extent there were some customers that could substitute JANTXV components in response to a small but significant and nontransitory price increase on JANS small signal transistors or JANS 5811 diodes, Microsemi would be able to identify those customers and charge them a lower price in order to avoid losing sales to them, while still raising the price to those customers who would not switch. Microsemi would not need to charge the lower price to all customers in order to avoid losing contested sales.

The Relevant Geographic Market

29. Customers that require JANTXV or JANS small signal transistors are located throughout the United States. Microsemi would be able to identify these customers and increase prices to them for JANTXV and JANS small signal transistors. Thus, under Section 7 of the Clayton Act and Section 2 of the Sherman Act, the relevant geographic market for JANTXV and JANS small signal transistors is the United States.

30. Customers that require JANTXV and JANS 5811 diodes are located throughout the United States. Microsemi would be able to identify these customers and increase prices to them for JANTXV and JANS 5811 diodes. Thus, under Section 7 of the Clayton Act and Section 2 of the Sherman Act, the relevant geographic market for JANTXV and JANS 5811 diodes is the United States.

Market Concentration

JANTXV and JANS Small Signal Transistors

31. Prior to the acquisition, Microsemi and Semicoa were the only suppliers of JANTXV small signal transistors in the world. Microsemi and Semicoa combined sold approximately $15 million of JANTXV small signal transistors annually. The transaction was a merger to monopoly, and Microsemi faces no current competition.

32. Prior to the acquisition, Microsemi and Semicoa were the only suppliers of JANS small signal transistors in the world. Microsemi had approximately $3.5 million in annual sales and Semicoa had approximately $3 million in annual sales. The transaction was a merger to monopoly, and Microsemi faces no current competition.

JANTXV and JANS 5811 Diodes

33. Microsemi manufactured JANTXV and JANS 5811 diodes until 2004, when it attempted to shift production from a plant in California to a plant in Arizona. Difficulties associated with that shift caused Microsemi to lose its JANTXV and JANS QML qualifications for that diode. As a result, there was no other firm qualified to make JANS 5811 diodes for several years. However, prior to 2004, Microsemi had built up its inventory of JANS 5811 diodes and continued to sell these products after its disqualification, making it the dominant supplier of these products since 2004.

34. After 2004, Microsemi's delivery times became very long. Customers who were unable to delay their programs further were forced to use less reliable commercial grade 5811 diodes at increased cost due to the need for additional testing. Microsemi produced almost all of the commercial grade products used by those customers.

35. In the meantime, Semicoa took significant steps to enter the production of JANTXV and JANS 5811 diodes in competition with Microsemi. The shortage led Semicoa to begin developing its own 5811 diodes to compete with Microsemi, with the assistance of a major customer that was dissatisfied with Microsemi as its sole source of supply. By July 2008, Semicoa was testing its 5811 diode and, had Microsemi not acquired Semicoa's assets later that month, Semicoa likely would have obtained JANTXV and JANS qualification and competed with Microsemi for JANTXV and JANS 5811 diodes. Semicoa already had received $3 million in orders. One other manufacturer, with manufacturing operations based in Mexico, is JANTXV qualified for 5811 diodes and may obtain JANS qualification, but would not be capable of satisfying those customers that require products manufactured in the United States, as discussed in Paragraph 41 below.

36. Microsemi regained JANTXV and JANS qualifications for its 5811 diodes in October 2008 after more than three years of effort. Had Microsemi not acquired the Semicoa assets in July 2008, Microsemi and Semicoa would have competed for the sale of these products.

Anticompetitive Effects of the Acquisition

JANTXV and JANS Small Signal Transistors

37. Prior to the acquisition, Semicoa was the only alternative source to Microsemi for JANTXV and JANS small signal transistors, and customers benefitted from robust competition between the firms. In the two years preceding the acquisition, Semicoa made significant investments in capacity expansion, purchasing new equipment and increasing its workforce to increase production and improve delivery times. Semicoa's shipments of JANTXV and JANS small signal transistors rose by more than 40 percent between 2005 and 2007. Semicoa aggressively priced its small signal transistors to take business from Microsemi, constraining Microsemi's prices.

38. Post-acquisition, Microsemi has raised prices significantly on JANTXV and JANS small signal transistors. Without Semicoa as a competitive constraint, Microsemi has the power to selectively raise prices to customers that Microsemi is aware cannot substitute lower grade components for JANTXV and JANS small signal transistors. In addition, Microsemi has announced that it intends to impose on these JANTXV and JANS customers less favorable terms of service than were provided before the acquisition. Customers will not be able to avoid these terms because they no longer possess an alternative to Microsemi to ensure timely delivery of their small signal transistors. The acquisition is likely to lead to lengthened delivery times and less certain delivery, imposing huge risks and delays on critical military and space-related programs.

39. Through its acquisition of the Semicoa assets, Microsemi has substantially lessened competition in the markets for JANTXV and JANS small signal transistors, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and willfully acquired a monopoly in violation of Section 2 of the Sherman Act, 15 U.S.C. 2.

JANTXV and JANS 5811 Diodes

40. 5811 diodes are produced using processes, skill sets and equipment unique to this kind of diode. Microsemi is the sole supplier of JANS 5811 diodes, and one of only two suppliers of JANTXV 5811 diodes. Before the acquisition, Semicoa had the capability to enter the markets for JANTXV and JANS 5811 diodes, and was well along the way toward completing that entry. Microsemi's purchase of the Semicoa assets eliminated Semicoa's likely entry to these markets, thereby leaving Microsemi alone in the market, and facing the potential entry of only one other firm, which would manufacture these products in Mexico. As a result, the transaction reduced from three to two the number of competitors that were likely to compete in these markets.

41. Competition from the firm with manufacturing facilities in Mexico will not be sufficient to constrain Microsemi's ability to raise the prices of JANTXV and JANS 5811 diodes. As the only other domestic supplier of JANTXV and JANS 5811 diodes, Semicoa would have been the best alternative source to Microsemi for these customers. Because of concerns relating to classified data, sensitive end uses, and lack of the ability of the United States government to prioritize delivery of product, many customers will hesitate to purchase these products from the firm with manufacturing facilities in Mexico.

42. Semicoa's entry into the market for JANTXV and JANS 5811 diodes likely would have benefited customers with lower prices, shorter delivery times, and more favorable terms of service, just as Semicoa's competition for sales of JANTXV and JANS small signal transistors benefited customers for those products. Microsemi's acquisition of the Semicoa assets prevented this entry and therefore substantially lessened competition in the markets for JANTXV and JANS 5811 diodes, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Entry into the Development, Manufacture and Sale of the Relevant Products

43. Entry into the development, manufacture and sale of JANTXV small signal transistors and JANTXV 5811 diodes will not be timely, likely, and sufficient to counter the anticompetitive effects of the acquisition. The process required to obtain QML certification and DSCC qualification for JANTXV small signal transistors and JANTXV 5811 diodes is lengthy. Entry resulting in significant market impact likely would take more than two years.

44. Entry into the development, manufacture and sale of JANS small signal transistors and JANS 5811 diodes sold to United States is even less likely to be timely, likely, and sufficient to counter the anticompetitive effects of the acquisition. The additional process required to obtain DSCC certification and qualification at the JANS level would require at least another year following JANTXV certification and

qualification. Moreover, because JANS parts are used for the most demanding and critical applications, customers are unlikely to shift significant amounts of JANS purchases to an entrant until that entrant has established a record of quality, consistency, and reliability at the JANS level. Entry resulting in significant market impact likely would take more than three years for firms that, unlike Semicoa as to 5811 diodes, did not already have JANS qualification for other products and significant backing from important customers.

45. The uncertainties and risks associated with any entry, and the likelihood that such entry would not be timely in any event, is demonstrated by Microsemi's own inability to transfer production of JANTXV and JANS 5811 diodes without losing QML qualification. Although Microsemi is a large and diversified manufacturer of QML products, and attempted to transfer production to a facility in Arizona from a facility that it had used to manufacture QML components for many years, Microsemi lost its qualification and needed three to four years to requalify to produce these components.

46. Further, to provide the degree of price competition that would have existed absent the acquisition, entrants would have to reach a scale sufficient to achieve production costs comparable to those of Semicoa. This would require significant investment, particularly in equipment dedicated to automated production, and is unlikely to occur given the small size of the potential markets.

VI. First Cause of Action

(Violation of Section 7 of the Clayton Act)

47. The United States incorporates the allegations of paragraphs 1 through 46 above.

48. Microsemi's acquisition of the assets of Semicoa used in the development, manufacture and sale of JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes has substantially lessened competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

49. The transaction has had the following effects, among others:

a. Competition between Microsemi and Semicoa in the development, manufacture and sale of JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes has been eliminated;

b. prices for JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes have increased and likely will continue to increase, delivery times likely will lengthen, and terms of service likely will become less favorable.

VII. Second Cause of Action

(Violation of Section 2 of the Sherman Act)

50. The United States incorporates the allegations of paragraphs 1 through 46 above.

51. On or about July 14, 2008, Microsemi willfully obtained monopoly power by acquiring the assets of Semicoa used in the development, manufacture and sale of JANTXV and JANS small signal transistors. Semicoa was Microsemi's only competitor, and the effect of this acquisition has been to create a monopoly in violation of Section 2 of the Sherman Act.

52. The transaction has had the following effects, among others:

a. The combination created a monopoly for the development, manufacture and sale of JANTXV and JANS small signal transistors;

b. Competition between Microsemi and Semicoa in the development, manufacture and sale of JANTXV and JANS small signal transistors has been eliminated; and

c. Prices for JANTXV and JANS small signal transistors have increased and likely will continue to increase, delivery times likely will lengthen, and terms of service likely will become less favorable.

XII. Requested Relief

53. The United States requests that this Court:

a. Adjudge and decree the acquisition of the assets of Semicoa by defendant Microsemi to violate Section 7 of the Clayton Act, 15 U.S.C. 18 and Section 2 of the Sherman Act, 15 U.S.C. 2;

b. Compel Microsemi to divest all of Semicoa's tangible and intangible assets related to the development, manufacture and sale of the relevant products, and to take any further actions necessary to restore the markets to the competitive position that existed prior to the acquisition;

c. Award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of the dissipation of Semicoa's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective final relief;

d. Award the United States the cost of this action; and

e. Grant the United States such other and further relief as the case requires and the Court deems just and proper.

Respectfully submitted,

Date: December 18, 2008.

For Plaintiff United States:

/s/ _____

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Acting Assistant Attorney General.

_____/s/_____

David L. Meyer,
Principal Deputy Assistant Attorney General.

/s/ _____

J. Robert Kramer II,
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United States District Court Central District of California

United States of America, Plaintiff, v. Microsemi Corporation, Defendant. Case No.: 8:09–cv–00275–AG–AN.

FINAL JUDGMENT

Hon. Andrew J. Guilford.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on December 18, 2008, and the United States and Microsemi Corporation (''Microsemi''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Microsemi agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by Microsemi to assure that competition is substantially restored;

And whereas, Microsemi has represented to the United States that the divestiture required below can and will be made and that Microsemi will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Microsemi under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and Section 2 of the Sherman Act, 15 U.S.C. 2.

II. Definitions

As used in this Final Judgment:

A. ''Microsemi'' means defendant Microsemi Corporation, a Delaware corporation with its headquarters in Irvine, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''Semicoa'' means Semicoa, a California corporation with its headquarters in Costa Mesa, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Acquirer'' means the entity to whom defendant divests the Divestiture Assets.

D. ''Divestiture Assets'' means all assets acquired by Microsemi from Semicoa on July 14, 2008, including but not limited to:

(1) All specifications, manufacturing plans, assembly instructions, standard operating procedures, and work instructions related to the manufacturing process, including all right, title and interest in or to all other assets of every kind and nature used or intended to be used in the operation of Semicoa's business, including, but not limited to, any finished or unfinished devices, any materials, data or know-how wherever found or of whatever kind reasonably required to manufacture and sell the goods and services previously produced by Semicoa, as well as all books and records, and all files, documents, papers and agreements that are material to the continuing operation of Semicoa's business;

(2) All finished goods, works in progress, piece parts and materials inventory, packaging, and labels, supplies and other related personal property, except that which has been sold since the closing of the July 14, 2008 transaction between Microsemi and Semicoa;

(3) All equipment, machinery or software used in the development, design, manufacturing and testing of goods previously manufactured by Semicoa;

(4) All right, title and interest in, and all information related to, any tooling, molds, equipment and proprietary specifications Semicoa previously had with any and all vendors from which Semicoa purchased goods or services, whether or not there are any ''open'' purchase orders issued to such vendors, as well as names and other information concerning any vendor that provides goods or services that were material to the operation of Semicoa's business;

(5) any list of customers to which Semicoa previously sold products or provided services over the three years prior to July 14, 2008, whether or not there are any ''open'' sales orders from such customers;

(6) all sales, marketing and promotional literature, cost and pricing data, promotion list, marketing data and other compilations of names and requirements, customer lists and other sales-related materials;

(7) all intellectual property (''IP'') assets or rights that have been used in the development, production, servicing, and sale of QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes, including but not limited to: All licenses, rights, and sublicenses, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, approvals, certifications, advertising literature, and all manuals and technical information provided to the employees, customers, suppliers, agents, or licensees of Semicoa and used in connection with the development, design, manufacture, testing, markets, sale, or distribution of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes;

(8) all rights under all contracts, licenses, sublicenses, agreements, leases, building leases, commitments, purchase orders, bids and offers; and

(9) all rights acquired pursuant to municipal, state and federal franchises, permits, licenses, agreements, waivers and authorizations.

E. ''QML Ultrafast Recovery Rectifier Diode'' means each JAN, JANS, JANTX, and JANTXV part listed on slash sheets 477 and 590 in the Qualified Products Database maintained by the Defense Supply Center Columbus.

F. ''QML Small Signal Transistor'' means each JAN, JANS, JANTX, and JANTXV part listed on slash sheets 182, 251, 253, 255, 270, 290, 291, 301, 317, 336, 349, 354, 366, 374, 376, 382, 391, 392, 394, 395, 423, 455, 512, 534, 535, 544, 545, 558, 559, 560, and 561 in the Qualified Products Database maintained by the Defense Supply Center Columbus.

III. Applicability

This Final Judgment applies to Microsemi, as defined above, and all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Divestiture

A. Microsemi is hereby ordered and directed, within thirty (30) calendar days after the filing of the proposed Final Judgment in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets to an Acquirer in a manner consistent with this Final Judgment. The United States, in its sole discretion, may agree to one extension of this time period, not to exceed thirty (30) calendar days, and shall notify the Court of such extension. Microsemi agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Microsemi shall provide the Acquirer and the United States information relating to the personnel involved in the development, production, operation, testing, management, or sales at the Divestiture Assets to enable the Acquirer to make offers of employment. Microsemi will not interfere with any negotiations by the Acquirer to employ any Microsemi employee whose primary responsibility was the development, production, operation, testing, management, or sales at the Divestiture Assets.

C. Microsemi shall permit the Acquirer to have reasonable access to personnel and to make inspections of the physical facilities included in the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

D. Microsemi shall warrant to the Acquirer that each asset will be operational on the date of sale.

E. Microsemi shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

F. Microsemi shall warrant to the Acquirer that there are no material defects in the environmental, zoning, permitting, qualification, or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, Microsemi will not undertake directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

G. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV of this Final Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of developing, producing, and selling QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Microsemi give Microsemi the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively in the business of developing, producing and selling QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes.

V. Appointment of Trustee to Effect Divestiture

A. If Microsemi has not divested the Divestiture Assets within the time period specified in Section IV(A), Microsemi shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Microsemi any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Microsemi shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Microsemi must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Microsemi, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Microsemi and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Microsemi shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Microsemi shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Microsemi shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Microsemi or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Microsemi. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Microsemi, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed Acquirer. Microsemi and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Microsemi, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Microsemi and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Microsemi's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Microsemi under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Microsemi shall not finance all or any part of any purchase or divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Preserving and Maintaining Divestiture Assets

Until the divestiture required by this Final Judgment has been accomplished, Microsemi shall take all steps necessary to comply with the Order Approving Stipulation Modifying Order to Preserve and Maintain Assets and Stipulation Modifying Order to Preserve and Maintain Assets. Microsemi shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the proposed Final Judgment in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Microsemi shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Microsemi has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Microsemi, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the proposed Final Judgment in this matter, Microsemi shall deliver to the United States an affidavit that describes in reasonable detail all actions Microsemi has taken and all steps Microsemi has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Microsemi shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Microsemi's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Microsemi shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Microsemi, be permitted:

(1) Access during Microsemi's office hours to inspect and copy, or at the option of the United States, to require Microsemi to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Microsemi, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Microsemi's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable

convenience of the interviewee and without restraint or interference by Microsemi.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Microsemi shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Microsemi to the United States, Microsemi represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Microsemi marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Microsemi ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Microsemi, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any entity engaged in the development, production, or sale of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Microsemi may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ____, 2009

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

Honorable Andrew J. Guilford,
United States District Judge.
LOWELL R. STERN,
lowell.stern@usdoj.gov,
United States Department of Justice,
Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530,
Telephone: (202) 307–0922,
Facsimile: (202) 307–6283, Attorney for Plaintiff.

United States District Court Central District of California

United States of America, Plaintiff, v. Microsemi Corporation, Defendant.

Case No.: 8:09–cv–00275–AG–AN
Competitive Impact Statement

Hon. Andrew J. Guilford

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On July 14, 2008, defendant Microsemi Corporation (''Microsemi'') acquired most of the assets of Semicoa. After investigating the competitive impact of that acquisition, the United States filed a civil antitrust Complaint on December 18, 2008, seeking an order compelling Microsemi to divest the Semicoa assets and other relief to restore competition. The Complaint alleges that the acquisition significantly lessened competition in the development, manufacture and sale of certain high reliability small signal transistors and ultrafast recovery rectifier diodes used in aerospace and military applications, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 2 of the Sherman Act, 15 U.S.C. 2. As a result of the acquisition, prices for these products did or would have increased, delivery times would have lengthened, and terms of service would have become less favorable. Pursuant to an Order to Preserve and Maintain Assets, which was entered on December 24, 2008 and modified on August 6, 2009, Microsemi may not, without written consent of the United States, dispose of the acquired assets prior to resolution of this proceeding.

Concurrent with the filing of this Competitive Impact Statement, the United States and Microsemi have filed a Stipulation Regarding Proposed Final Judgment and a proposed Final Judgment. These filings are designed to restore competition through a divestiture of the acquired assets. The proposed Final Judgment, which is explained more fully below, requires Microsemi to divest the Semicoa assets, thus restoring the competition that was lost as a result of the acquisition.

The United States and Microsemi have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Microsemi and the Semicoa Acquisition

Microsemi is a Delaware corporation with its principal place of business in Irvine, California. Microsemi's sales were approximately $514 million in fiscal year 2008. Microsemi's products include a range of electronic components, including high reliability small signal transistors and ultrafast recovery rectifier diodes.

Semicoa was a California corporation that operated from a manufacturing facility in Costa Mesa, California. Semicoa's sales were approximately $14.7 million in 2007. Semicoa manufactured a range of high reliability electronic devices for the military, aerospace, and satellite markets, including high reliability small signal transistors and ultrafast recovery rectifier diodes.

On July 14, 2008, Microsemi acquired substantially all of the assets of Semicoa. The transaction was not subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which requires companies to notify and provide information to the Department of

Justice and the Federal Trade Commission before consummating certain acquisitions. As a result, the Department of Justice did not learn of the transaction until after it had been consummated.

B. The Competitive Impact of the Acquisition on the Markets for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes

Transistors and diodes are semiconductor devices used to control the flow of electric current. In their simplest forms, transistors can be viewed as switches and diodes can be viewed as one-way valves. Both products begin as silicon wafers produced in a furnace, typically referred to as a foundry. They are then cut into small sections known as dies. These dies are packaged in various ways into transistors and diodes.

Small signal transistors are a class of transistors commonly used in communications and other signal processing applications. Small signal transistors operate at low power levels and typically are used to amplify electrical signals in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems.

Rectifier diodes are a class of diodes also commonly used in communications and other signal processing applications. Rectifier diodes operate at low power levels and are used to convert alternating current to direct current in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Ultrafast recovery rectifier diodes are distinguished from other rectifier diodes by their extremely high alternating speeds, which minimize power loss and waste heat generation. Their ability to perform efficiently and without generating excess heat is especially important in applications such as satellites and missiles, where power availability is strictly limited and heat dissipation is challenging.

Highly reliable performance under demanding conditions is absolutely essential in military and space systems, where failure of a single component could result in failure of the mission. To ensure reliability and proper performance, production of these components for use in United States military and space applications is supervised by the Defense Supply Center Columbus (''DSCC''), a component of the Department of Defense. DSCC maintains a list of qualified components and their suppliers generally known as the Qualified Manufacturers List, or QML. Manufacturers seeking placement on the QML must pass rigorous audits of their facilities, production processes, assembly and test procedures, equipment, documentation, and personnel.

Prior to the acquisition, Microsemi and Semicoa were the only QML-listed manufacturers of small signal transistors. In addition, Semicoa and Microsemi were both poised to obtain QML listing for ultrafast recovery rectifier diodes, which at the time were in critically short supply.[1] While a firm with production facilities in Mexico did produce some QML Ultrafast Recovery Rectifier Diodes, concerns related to classified data, sensitive end uses, and the inability of the United States government to prioritize product deliveries beyond the nation's borders make many customers reluctant to purchase such products from non-domestic sources.

As discussed in the Complaint, customers benefitted from robust competition between the two firms. In the two years before the acquisition, Semicoa expanded its capacity, improved delivery times, and priced aggressively to take business from Microsemi. As a result, it increased its shipments by more than 40 percent between 2005 and 2007. Without the constraining effect of Semicoa, Microsemi has the power to raise prices and lengthen delivery times on QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes.[2]

There are no practical substitutes for QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes. While commercial grade analogues of these components exist, such components are produced to much wider tolerances than QML components, and lack the extensive production control, testing and documentation—and thus the reliability and guaranteed performance—of QML components. While extensive testing of commercial grade components might somewhat reduce the risk of failure posed by the use of such components, such testing would be costly and time consuming, and some risk would still remain. Military and aerospace customers therefore do not regard commercial grade components as viable substitutes for QML components.

Entry of new firms into the production of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes is highly unlikely to alleviate the harm to competition resulting from Microsemi's acquisition of Semicoa. Obtaining QML listing is a lengthy and uncertain process. Even at the lowest QML reliability grades, entry resulting in sufficient market impact likely would take more than two years. Moreover, entry on a scale sufficient to match the competitive impact of Semicoa prior to the acquisition would require significant investment, particularly in equipment dedicated to automated production, and is unlikely to occur given the small size of the potential markets.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the markets for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes by reestablishing Semicoa as an independent and economically viable competitor. The assets to be divested include essentially all of the assets[3] acquired by Microsemi in the July 14, 2008 transaction. The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the provision of QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes.

The proposed Final Judgment requires Microsemi, within thirty (30) days after the filing of the proposed Final Judgment, or five (5) calendar days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Semicoa assets as a viable ongoing business. The United States may, in its discretion, extend this period by an additional period of up to thirty (30) days. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. Microsemi must use its best efforts to accomplish the divestiture as expeditiously as possible and shall cooperate with prospective purchasers.

In the event that Microsemi does not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the Final Judgment provides that Microsemi will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

In addition to the divestiture provisions, the proposed Final Judgment, in Section XI, provides that Microsemi will provide the United States at least thirty (30) days' advance notice of any acquisition of the assets of, or any interest in, any entity

[1] Products listed on the QML are organized into ''slash sheets,'' which generally denote groups of components produced by similar processes and having somewhat similar characteristics. Small signal transistors are denoted on slash sheets 182, 251, 253, 255, 270, 290, 291, 301, 317, 336, 349, 354, 366, 374, 376, 382, 391, 392, 394, 395, 423, 455, 512, 534, 535, 544, 545, 558, 559, 560, and 561. Ultrafast recovery rectifier diodes are denoted on slash sheets 477 and 590. This Competitive Impact Statement will hereinafter refer to the products on these slash sheets as ''QML Small Signal Transistors'' and ''QML Ultrafast Recovery Rectifier Diodes.''

[2] The Complaint describes the various reliability grades of QML products. In particular, it distinguishes products qualified for use in space (''JANS'') from lower reliability grades (collectively referred to in the Complaint as ''JANTXV''). The terms of the proposed Final Judgment, however, do not vary among the different QML reliability grades. Therefore, this Competitive Impact Statement uses the terms ''QML Small Signal Transistors'' and ''QML Ultrafast Recovery Rectifier Diodes'' to include products of all QML reliability grades.

[3] Inventory and/or work-in-progress that Microsemi sold in the ordinary course of business after the July 14, 2008 acquisition of the Semicoa assets are excluded from the divestiture. The Acquirer will acquire all of the assets necessary to restore competition in the relevant markets.

engaged in the development, production or sale of QML Small Signal Transistors or QML Ultrafast Recovery Rectifier Diodes. The notification shall be provided in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions need be provided only for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Microsemi have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, Liberty Square Building, 450 5th Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Microsemi. The United States could have continued the litigation and sought divestiture of the Semicoa assets. The United States is satisfied, however, that the divestiture of the assets in the manner prescribed in the proposed Final Judgment will restore competition in the markets for QML Small Signal Transistors and QML Ultrafast Recovery Rectifier Diodes. The proposed Final Judgment would achieve all of the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[4]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also* Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[5] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001, 103 S. Ct. 1240, 75 L.Ed.2d 472 (1983); *see also United States*

[4] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for the court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[5] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

v. Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985), (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[6]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 20, 2009.

Respectfully submitted,
By: _____/s/_____
Lowell R. Stern, Attorney for Plaintiff.

Certificate of Service

I hereby certify that on the 20th day of August, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Brett J. Williamson,
Darin J. Glasser,
O'Melveny & Myers LLP, 610 Newport Center Drive, 17th Floor, Newport Beach, CA 92660–6429.
Michael E. Antalics,
Benjamin G. Bradshaw,
O'Melveny & Myers LLP, 1625 Eye Street, NW., Washington, DC 20006.
_____/s/_____
Lowell R. Stern,
Attorney for Plaintiff.

[FR Doc. E9–21051 Filed 8–31–09; 8:45 am]

BILLING CODE 4410–11–P

[6] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Solar Photovoltaic (PV) Project located at Westover Job Corp Center, 103 Johnson Drive, Chicopee, MA

AGENCY: Office of the Secretary, Department of Labor.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Solar PV Panel Installation to be located at the Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Solar PV Project to be located at the Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts, and that the proposed plan for the construction of solar PV panels at the Westover Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of approximately 1.5 acres of stationary solar photovoltaic (PV) panels to create a 150 to 200 kilowatt system connected to the closest electrical terminal at the Westover Job Corps Center. The solar panels will produce clean energy for the Westover Job Corps Center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet Federal requirements in Executive Order 13423 for renewable energy production. This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage.

Based on the information gathered during the preparation of the EA, the construction of the Solar PV Project at Westover Job Corp Center, 103 Johnson Drive, Chicopee, Massachusetts will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,
Interim National Director of Job Corps.

[FR Doc. E9–20969 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Edison Job Corps Center Solar PV Project located at the Edison Job Corps Center

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Solar Panel Installation for the Edison Job Corps Center Solar PV Project to be located at the Edison Job Corps Center, 500 Plainfield Avenue, Township of Edison, New Jersey 08817 (Edison JCC).

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Edison Job Corps Center Solar PV Project to be located at the Edison JCC, and that the proposed plan for the construction of solar panels at the Edison JCC will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of solar panels located at the Edison JCC. The proposed project includes a renewable energy project that will consist of installing 10 rows of Ying Li 175 Photovoltaic Modules in an east/west orientation. The 1,620 modules will be fixed at 20 degrees. The solar panel rows and associated equipment will be surrounded by a fence. The entire proposed installation will encompass approximately 2 acres of the Edison JCC and will be located in an undeveloped grass lawn area surrounded by dormitory buildings on the south, storage sheds to the east, and the border of the facility to the west and north. The proposed project will enable the generation of approximately 284 kilowatts during optimal performance. Solar-generated electricity created by the solar photovoltaic system will reduce pollution and the demand for fossil fuels. The solar panels will generate energy for the Edison JCC, demonstrate renewable energy capabilities to Job Corps Students, and help the program meet Federal requirements in Executive Order 13423 for renewable energy production.

This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage. Based on the information gathered during the preparation of the EA, the construction of the Edison Job Corps Center Solar PV Project at the Edison JCC will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,

Interim National Director of Job Corps.

[FR Doc. E9–20973 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for Small Wind Turbine Installation at the Hawaii-Maui Job Corps Center Located at 500 Ike Drive Makawao, Island of Maui, HI 96768

AGENCY: Office of the Secretary, Department of Labor.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Small Wind Turbine Installation to be located at the Hawaii-Maui Job Corp Center, 500 Ike Drive Makawao, Island of Maui, Hawaii 96768.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Wind Turbine Installation to be located at the Hawaii-Maui Job Corp Center, 500 Ike Drive Makawao, Island of Maui, Hawaii 96768, and that the proposed plan for the construction of a wind turbine at the Hawaii/Maui Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The proposed project includes a renewable energy project that will consist of the construction of a 1–100 kW wind turbine or 2–50 kW wind turbines. The proposed project will enable the Job Corps to generate their own clean power at the facility. The wind turbines will be installed on self supporting towers approximately 120 feet above the ground. The wind turbines will produce clean energy for the Hawaii-Maui Job Corps Center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet Federal requirements in Executive Order 13423 for renewable energy production. This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage. Based on the information gathered during the preparation of the EA, the construction of a wind turbine at the Hawaii-Maui Job Corp Center, 500 Ike Drive Makawao, Island of Maui, Hawaii 96768 will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,

Interim National Director of Job Corps.

[FR Doc. E9–20971 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for Small Wind Turbine Installation at the Cassadaga, NY Job Corps Center located at 8115 Glasgow Road in Pomfret, NY 14063

AGENCY: Office of the Secretary, Department of Labor.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Small Wind Turbine Installation to be located at the Cassadaga, NY Job Corp Center, 8115 Glasgow Road in Pomfret, New York 14063.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Wind Turbine Installation to be located at the Cassadaga, NY Job Corp Center, 8115 Glasgow Road in Cassadaga (Town of Pomfret), New York 14063, and that the proposed plan for the construction of a wind turbine at the Cassadaga, NY Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of a two—10kW or one 20 kW rated wind turbine at the Cassadaga, NY Job Corps Center.

The wind turbines will be installed on self supporting towers approximately 80 feet above the ground. The wind turbines will produce clean energy for the Cassadaga, NY Job Corps Center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet federal requirements in Executive Order 13423 for renewable energy production.

This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage.

Based on the information gathered during the preparation of the EA, the construction of a wind turbine at the Cassadaga, NY Job Corp Center, 8115 Glasgow Road in Pomfret, New York 14063 will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,

Interim National Director of Job Corps.

[FR Doc. E9–20975 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for a Small Wind Turbine Installation at the Laredo Job Corps Center Located at 1701 Island Street, Laredo, TX 78041

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Small Wind Turbine Installation to be located at the Laredo Job Corps Center, 1701 Island Street, Laredo, Texas 78041.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Small Wind Turbine Installation to be located at 1701 Island Street, Laredo, Texas, and that the proposed plan for the construction of a wind turbine at the Laredo Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of either a single 20 kW or two 10 kW wind turbines at the Laredo Job Corps Center.

The wind turbine will be installed on a self supporting tower approximately 120′ above the ground. The wind turbines will produce clean energy for the Laredo Job Corps center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet Federal requirements in Executive Order 13423 for renewable energy production.

This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage.

Based on the information gathered during the preparation of the EA, the construction of the Laredo Job Corps Small Wind Turbine located at 1701 Island Street, Laredo, Texas will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,

Interim National Director of Job Corps.

[FR Doc. E9–20972 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for Small Wind Turbine Installation at the Angell Job Corps Center located at 335 NE. Blodgett Road, Yachats, OR

AGENCY: Office of the Secretary, Department of Labor.

Recovery: This project will be wholly funded under the American Recovery and Reconstruction Act of 2009.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for Wind Turbine Installation to be located at the Angell Job Corps Center, 335 NE. Blodgett Road, Yachats, Oregon.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed Small Wind Turbine Installation to be located at the Angell Job Corps Center, 335 NE. Blodgett Road, Yachats, Oregon, and that the proposed plan for the construction of a wind turbine at the Angell Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by October 1, 2009.

ADDRESSES: Any comment(s) are to be submitted to William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting William A. Dakshaw, P.E., Division of Facilities and Asset Management, Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–2867 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The proposed project includes a renewable energy project that will consist of the construction of a 1–20 kW wind turbine or 2–10 kW wind turbines. The proposed project will enable the Job Corps to generate their own clean power at the facility. The wind turbines will be installed on self supporting towers approximately 80 feet above the ground. The wind turbines will produce clean energy for the Angell Job Corps Center, demonstrate renewable energy capabilities to Job Corps Students and help the program meet Federal requirements in Executive Order 13423 for renewable energy production. This project is not expected to have a negative impact on population demographics, the surrounding area, environmental quality, or natural systems and heritage. Based on the information gathered during the preparation of the EA, the construction of a wind turbine at the Angell Job Corps Center, 335 NE. Blodgett Road, Yachats, Oregon will not create any significant adverse impacts on the environment.

Dated: August 25, 2009.

Lynn Intrepidi,

Interim National Director of Job Corps.

[FR Doc. E9–20970 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Labor-Management Standards is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection 1215–0205: Pre-2007 Labor Organization Officer and Employee Report (Pre-2007 Form LM–30). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before November 2, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, E-mail *Lawrence.Steven@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 401 *et seq.*, to provide for the disclosure of information on the financial transactions and administrative practices of labor organizations, and, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. Section 208 of the Act authorizes the Secretary to issue rules and regulations prescribing the form of the required reports and such other rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as may be necessary to prevent circumvention or evasion of the reporting requirements.

The Secretary established the Form LM–30, Labor Organization Officer and Employee Report, pursuant to section 202 of the LMRDA, 29 U.S.C. 432. *See* 29 CFR Part 404. Section 202 was intended to disclose certain payments and interests that could create a potential conflict of interest between the union officer and employee and his or her obligations to the union. The Form LM–30 requires every labor organization officer and employee (other than an employee performing exclusively clerical or custodial services) to file a Form LM–30 report within 90 days of the end of his/her fiscal year listing and describing certain financial transactions engaged in, and interests held by, the officer or employee or his/her spouse or minor child:

(1) Legal and equitable interests, transactions with, and economic benefits from an employer whose employees his/her union represents or seeks to represent; (2) legal and equitable interests in, transactions with, and economic benefits from certain businesses that deal in substantial part with the business of the employer whose employees the union represents or seeks to represent, or that deal with the union or a trust in which the labor organization is interested; and (3) certain income and other economic benefits received from any employer or labor relations consultant.

The Form LM–30 applies to officers and employees of labor organizations with private sector employees working in interstate commerce within the meaning of sections 3(i) and (j) of the LMRDA, 29 U.S.C. 402(i) and (j), and of labor organizations composed of U.S. Postal Service employees. It does not apply to officers and employees of labor organizations that represent employees of the executive branch agencies of the

Federal Government, the Library of Congress, the Government Printing Office, or employees of the U.S. Congress. Form LM–30 filers must ensure the maintenance and retention of supporting records for five years after the required reports are filed.

On July 2, 2007, the Department published a final rule establishing a revised Form LM–30, which dramatically altered the pre-2007 Form LM–30 (72 FR 36105). The information collection for the 2007 version of the Form LM–30 is currently approved by OMB through November 30, 2011, with an OMB number of 1215–0188. (Information collection 1215–0188 also includes the remaining LMRDA reporting and disclosure forms).

However, fundamental questions have arisen regarding the scope and extent of the reporting obligations under the 2007 Form LM–30 and remain unanswered, and litigation challenging some aspects of this form remains pending. The Department published in the spring 2009 Semi-Annual Regulatory Agenda notice of an intended rulemaking to revise the Form LM–30. The rulemaking is intended to review questions of policy and law surrounding the union officer and employee-reporting obligation and will focus on reporting changes resulting from the 2007 regulatory revision of the LM–30 form and instructions.

While the planned rulemaking is pending, union officers and employees must continue to meet their statutory obligation pursuant to section 202 of the LMRDA. In light of the unresolved questions regarding the scope of reporting required under section 202, the pending regulatory action, the pending litigation, and the statutorily mandated filing obligation, the Department has determined that it would not be a good use of resources to bring enforcement actions based upon a failure to use a specific form to comply with the statutory obligation to report under section 202 of the LMRDA. Accordingly, the Department will refrain from initiating enforcement actions against union officers and union employees based solely on the failure to file the report required by section 202 using the 2007 form, as long as individuals meet their statutorily-required filing obligation in some manner. The Department will accept a report filed on either the pre-2007 Form LM–30 or the 2007 form for purposes of this enforcement policy.

This information collection request is needed to ensure that filers have both options available pending regulatory action, and pertains only to the pre-2007 Form LM–30. This information collection is currently approved for use through September 30, 2009. The Department is seeking an extension of this information collection on the pre-2007 Form LM–30 through November 30, 2011. This date is the current expiration date for OMB Number 1215–0188 (all other reporting and disclosure forms).

II. Review Focus

The Department of Labor is particularly interested in comments that:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The DOL seeks the approval of the extension of this information collection in order to ensure parties receive information required by the LMRDA and for the agency to carry out its responsibilities under the Act.

Type of Review: Extension.

Agency: Office of Labor-Management Standards.

Title: Pre-2007 Labor Organization Officer and Employee Report (Pre-2007 Form LM–30).

OMB Number: 1215–0205.

Affected Public: Private Sector.

Total Respondents: 1,998.

Total Annual Responses: 1,998.

Estimated Total Burden Hours: 1,166.

Estimated Time Per Response: 35 minutes.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 27, 2009.

Steven D. Lawrence,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning.

[FR Doc. E9–21025 Filed 8–31–09; 8:45 am]

BILLING CODE 4510–CP–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 2 p.m., Tuesday, September 1 2009.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order.
II. Approval of the Minutes.
III. Summary Report of the Finance, Budget and Program Committee.
IV. Financial Report.
V. Corporate Scorecard.
VI. Chief Executive Officer's Quarterly Management Report.
VII. Adjournment.

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. E9–21126 Filed 8–28–09; 11:15 am]

BILLING CODE 7570–02–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; September 3, 2009; Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 74, Number 149, Page 39118) on August 5, 2009. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., September 3, 2009 in conjunction with OPIC's September 17, 2009 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: August 28, 2009.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E9–21143 Filed 8–28–09; 11:15 am]

BILLING CODE 3210–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Glenda Haendschke, Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between July 1, 2009, and July 31, 2009. These notices are published monthly in the **Federal Register** at *www.gpoaccess.gov/fr/*. A consolidated listing of all authorities as of June 30 is published each year. The following Schedules are *not* codified in the code of Federal Regulations. These are agency specific exceptions.

Schedule A

No Schedule A authority to report.

Schedule B

No Schedule B authority to report.

Schedule C

The following Schedule C appointments were approved during June 2009.

Office of Science and Technology Policy

TSGS09003 Policy Assistant to the Chief of Staff. Effective July 29, 2009.

Office of Management and Budget

BOGS90013 Legislative Assistant for Legislative Affairs. Effective July 29, 2009.

Office of National Drug Control Policy

QQGS90004 Policy Advisor to the Chief of Staff. Effective July 9, 2009.

QQGS90005 Deputy Associate Director for Public Affairs. Effective July 9, 2009.

QQGS90006 Outreach and Events Coordinator for the Chief of Staff. Effective July 13, 2009.

QQGS90007 Associate Director for Public Affairs. Effective July 15, 2009.

Department of State

DSGS69962 Protocol Officer, Ceremonials to the Chief of Protocol. Effective July 6, 2009.

DSGS69969 Special Assistant, Policy Planning Staff. Effective July 8, 2009.

DSGS69919 Staff Assistant to the Chief of Protocol. Effective July 9, 2009.

DSGS69971 Staff Assistant to the Director, Policy Planning Staff. Effective July 27, 2009.

DSGS69999 Program Analyst, Refugees and Migration. Effective July 27, 2009.

DSGS69956 Director for Global and Functional Affairs for Legislative and Intergovernmental Affairs. Effective July 28, 2009.

Department of the Treasury

DYGS00522 Special Assistant to the Director of Scheduling and Advance. Effective July 1, 2009.

DYGS60404 Senior Advisor to the Assistant Secretary (Financial Institutions). Effective July 6, 2009.

DYGS60318 Deputy Director for Legislative Affairs. Effective July 16, 2009.

Department of Defense

DDGS17236 Public Affairs Specialist for Public Affairs. Effective July 6, 2009.

DDGS17235 Special Assistant to the Assistant Secretary of Defense (Global Strategic Affairs). Effective July 7, 2009.

DDGS17237 Special Assistant for Asian and Pacific Security Affairs for Defense (Legislative Affairs). Effective July 15, 2009.

DDGS17238 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective July 17, 2009.

DDGS17239 Special Assistant for Networks and Information Integration of Defense (Legislative Affairs). Effective July 24, 2009.

DDGS17246 Special Assistant to the Assistant Secretary of Defense (Asian and Pacific Security Affairs). Effective July 24, 2009.

DDGS17240 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 28, 2009.

DDGS17243 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 28, 2009.

DDGS17244 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 28, 2009.

DDGS17245 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 28, 2009.

DDGS17247 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 28, 2009.

DDGS17248 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 28, 2009.

DDGS17249 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 28, 2009.

DDGS17250 Defense Fellow for Special Assistant to the Secretary of Defense for the White House Liaison. Effective July 31, 2009.

Department of the Navy

DNGS60076 Director of Strategic Communications for the Navy. Effective July 31, 2009.

Department of the Air Force

DFGS60020 Special Assistant to the General Counsel. Effective July 27, 2009.

Department of Justice

DJGS00304 Associate Director to the Deputy Director, Office of Intergovernmental and Public Liaison. Effective July 6, 2009.

DJGS00519 Attorney Advisor to the Assistant Attorney General (Legislative Affairs). Effective July 7, 2009.

DJGS00333 Special Assistant to the Assistant Attorney General. Effective July 9, 2009.

DJGS00531 Research Assistant to the Director, Office of Intergovernmental and Public Liaison. Effective July 10, 2009.

DJGS00103 Counsel to the Associate Attorney General. Effective July 15, 2009.

DJGS00528 Counsel to the Assistant Attorney General Civil Division. Effective July 21, 2009.

DJGS00536 Special Assistant to the Director of the Violence Against Women Office. Effective July 22, 2009.

DJGS00537 Counsel to the Director. Effective July 22, 2009.

DJGS00164 Counsel to the Assistant Attorney General. Effective July 24, 2009.

DJGS00233 Counsel to the Assistant Attorney General Civil Division. Effective July 27, 2009.

DJGS00499 Confidential Assistant to the Director of the Violence Against Women Office. Effective July 27, 2009.

DJGS00505 Confidential Assistant to the Solicitor General. Effective July 27, 2009.

DJGS00511 Special Assistant to the Attorney General. Effective July 27, 2009.

Department of Homeland Security

DMGS00824 Advisor to the Assistant Secretary for Policy. Effective July 14, 2009.
DMGS00833 Confidential Assistant to the Under Secretary for National Protection and Programs. Effective July 14, 2009.
DMGS00783 Director/Executive Secretariat, Private Sector Advisory Committee. Effective July 17, 2009.
DMGS00832 Confidential Assistant to the Assistant Secretary for International Affairs. Effective July 17, 2009.
DMGS00830 Executive Assistant to the Commissioner, United States Customs and Border Protection. Effective July 21, 2009.
DMGS00834 Executive Assistant to the Deputy Secretary of the Department of Homeland Security. Effective July 22, 2009.

Department of the Interior

DIGS01166 Administrative Aide to the Director, External and Intergovernmental Affairs. Effective July 7, 2009.
DIGS01167 Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks. Effective July 7, 2009.
DIGS01168 Counselor to the Assistant Secretary—Water and Science. Effective July 21, 2009.
DIGS00101 Special Assistant to the Director Bureau of Land Management. Effective July 27, 2009.

Department of Agriculture

DAGS00154 Senior Advisor for the Under Secretary for Research, Education and Economics. Effective July 9, 2009.
DAGS00158 Confidential Assistant to the Administrator for Risk Management. Effective July 9, 2009.
DAGS00159 Senior Advisor to the Under Secretary for Research, Education and Economics. Effective July 9, 2009.
DAGS00163 Senior Advisor to the Under Secretary for Research, Education and Economics. Effective July 13, 2009.
DAGS00103 Director of Advance for the Director of Communications. Effective July 15, 2009.
DAGS00107 Director, Economic and Community Development for Rural Development. Effective July 15, 2009.
DAGS00108 Director of Speechwriting/Research for the Director of Communications. Effective July 15, 2009.
DAGS00112 Special Assistant to the Deputy Assistant Secretary for Natural Resources and Environment. Effective July 15, 2009.
DAGS00148 Confidential Assistant to the Secretary. Effective July 15, 2009.
DAGS00164 Confidential Assistant to the Administrator, Farm Service Agency. Effective July 15, 2009.
DAGS00165 Deputy Director of Communications. Effective July 15, 2009.
DAGS00106 Confidential Assistant to the Assistant Secretary for Administration. Effective July 22, 2009.
DAGS00160 Press Assistant for the Director of Communications. Effective July 22, 2009.
DAGS00162 Staff Assistant to the Deputy Secretary. Effective July 22, 2009.
DAGS00166 Special Assistant to the Administrator. Effective July 22, 2009.
DAGS00167 Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective July 22, 2009.
DAGS00168 Senior Advisor, External Affairs, Farm Service Agency. Effective July 22, 2009.
DAGS00170 Associate Regional Chief—East, Natural Resources Conservation Service. Effective July 28, 2009.
DAGS00171 Regional Associate Chief—West, Natural Resources Conservation Service. Effective July 28, 2009.
DAGS00161 Press Secretary to the Director of Communications. Effective July 31, 2009.

Department of Commerce

DCGS60173 Senior Policy Advisor for the Assistant Secretary for Economic Development. Effective July 2, 2009.
DCGS00628 Confidential Assistant to the Director of Scheduling and Advance. Effective July 7, 2009.
DCGS00321 Chief of Congressional Affairs for the Associate Director for Communications. Effective July 8, 2009.
DCGS00342 Special Assistant to the Assistant Secretary for Import Administration. Effective July 16, 2009.
DCGS00161 Special Assistant to the Under Secretary, International Trade Administration. Effective July 21, 2009.
DCGS00162 Senior Advisor to the Assistant Secretary for Market Access and Compliance. Effective July 21, 2009.
DCGS00302 Director of External Affairs for National Oceanic and Atmospheric Administration. Effective July 21, 2009.
DCGS00392 Confidential Assistant to the Assistant Secretary and Director General of United States/Foreign Commercial Service. Effective July 21, 2009.
DCGS00442 Congressional Affairs Specialist for National Telecommunications and Information Administration. Effective July 21, 2009.
DCGS00506 Special Assistant to the Chief of Staff, International Trade Administration. Effective July 21, 2009.
DCGS00520 Special Assistant to the Assistant Secretary for Market Access and Compliance. Effective July 21, 2009.
DCGS00637 Special Assistant to the Assistant Secretary and Director General of United States/Foreign Commercial Service. Effective July 21, 2009.
DCGS00664 Special Assistant to the Assistant Secretary and Director General of United States/Foreign Commercial Service. Effective July 21, 2009.
DCGS60395 Confidential Assistant to the Assistant Secretary and Director General of United States/Foreign Commercial Service. Effective July 21, 2009.

Department of Labor

DLGS60226 Legislative Officer for Congressional and Intergovernmental Affairs. Effective July 1, 2009.
DLGS60270 Special Assistant to the Assistant Secretary for Employment and Training. Effective July 1, 2009.
DLGS60220 Director of Public Engagement. Effective July 6, 2009.
DLGS60235 Legislative Assistant for Congressional and Intergovernmental Affairs. Effective July 13, 2009.

Department of Health and Human Services

DHGS60570 Confidential Assistant (Advance) to the Deputy Director for Advance. Effective July 1, 2009.
DHGS60017 Director of Scheduling and Advance. Effective July 9, 2009.
DHGS60336 Confidential Assistant to the Deputy Assistant Secretary for Legislation (Human Services). Effective July 9, 2009.
DHGS00267 Policy Coordinator for the Executive Secretariat to the Department. Effective July 17, 2009.
DHGS60046 Senior Speech Writer for Public Affairs. Effective July 17, 2009.
DHGS60112 Confidential Assistant to the Deputy Secretary for Public Affairs (Policy and Strategy). Effective July 17, 2009.
DHGS60257 Special Assistant to the Director, Intergovernmental Affairs. Effective July 17, 2009.
DHGS60028 Special Assistant to the Chief of Staff. Effective July 20, 2009.

DHGS60075 Special Assistant to the Director, Center for Faith Based and Community Initiatives. Effective July 20, 2009.
DHGS60511 Special Assistant to the Deputy Assistant Secretary and Inter-Departmental Liaison for Early Childhood Development. Effective July 21, 2009.

Department of Education

DBGS00222 Confidential Assistant to the Director, Race to the Top. Effective July 1, 2009.
DBGS00683 Special Assistant to the Deputy Secretary of Education. Effective July 1, 2009.
DBGS00197 Confidential Assistant to the Special Assistant, Office of Legislation and Congressional Affairs. Effective July 2, 2009.
DBGS00435 Special Assistant to the Assistant Secretary, Office of Communications and Outreach. Effective July 2, 2009.
DBGS00682 Deputy General Counsel. Effective July 7, 2009.
DBGS00609 Special Assistant to the Under Secretary. Effective July 9, 2009.
DBGS00103 Special Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective July 20, 2009.
DBGS00231 Confidential Assistant to the Deputy Under Secretary. Effective July 20, 2009.
DBGS00509 Director of the White House Initiative on Historically Black Colleges and Universities. Effective July 20, 2009.
DBGS00680 Deputy Assistant Secretary for Planning, Evaluation, and Policy Development. Effective July 20, 2009.
DBGS00428 Confidential Assistant to the Special Assistant, Office of Communication and Outreach. Effective July 23, 2009.
DBGS00684 Special Assistant to the Deputy Secretary of Education. Effective July 23, 2009.
DBGS00004 Senior Advisor on Early Learning for the Chief of Staff. Effective July 31, 2009.

Environmental Protection Agency

EPGS06019 Director, Office of the Executive Secretariat. Effective July 16, 2009.
EPGS09010 Special Assistant to the Associate Administrator for Public Affairs. Effective July 24, 2009.

Federal Communications Commission

FCGS90147 Legislative Analyst for the Director, Office of Legislative Affairs. Effective July 21, 2009.
FCGS90148 Legislative Analyst for the Director, Office of Legislative Affairs. Effective July 21, 2009.

Department of Energy

DEGS00764 Special Assistant to the General Counsel. Effective July 7, 2009.
DEGS00762 Special Assistant to the Chief of Staff. Effective July 22, 2009.
DEGS00765 Special Assistant to the Assistant Secretary (Energy Efficiency and Renewable Energy). Effective July 22, 2009.

Small Business Administration

SBGS00540 Assistant Administrator for Faith-Based and Community Initiatives. Effective July 9, 2009.
SBGS00653 Deputy General Counsel. Effective July 9, 2009.
SBGS00685 Special Assistant to the Chief of Staff. Effective July 24, 2009.
SBGS00686 Senior Advisor to the Chief Operating Officer. Effective July 30, 2009.
SBGS00622 Assistant Administrator for Native American Affairs for Entrepreneurial Development. Effective July 31, 2009.

General Services Administration

GSGS60095 White House Liaison. Effective July 1, 2009.
GSGS60069 Press Secretary for Communications and Marketing. Effective July 17, 2009.
GSGS00015 Special Assistant to the Chief of Staff. Effective July 22, 2009.
GSGS00090 Special Assistant to the White House Liaison. Effective July 22, 2009.
GSGS00095 Congressional Relations Specialist for Congressional and Intergovernmental Affairs. Effective July 22, 2009.
GSGS00168 Special Assistant to the White House Liaison. Effective July 22, 2009.
GSGS00190 Congressional Relations Specialist for Congressional and Intergovernmental Affairs. Effective July 22, 2009.
GSGS60126 Deputy Associate Administrator for Communications and Marketing for Citizen Services and Communications. Effective July 22, 2009.

Export-Import Bank

EBSL45019 Senior Vice President and General Counsel to the President and Chairman. Effective July 1, 2009.
EBGS44809 Senior Advisor and Executive Secretary to the President and Chairman. Effective July 13, 2009.
EBGS42989 Senior Advisor to the President and Chairman. Effective July 21, 2009.

Occupational Safety and Health Review Commission

SHGS00016 Confidential Assistant to the Commission Member (Chairman). Effective July 9, 2009.

Consumer Product Safety Commission

PSGS00055 Chief of Staff to the Chairman, Consumer Product Safety Commission. Effective July 9, 2009.

Commodity Futures Trading Commission

CTOT00056 Special Assistant to the Commissioner. Effective July 21, 2009.
CTOT00088 Deputy Chief of Staff for the Chairperson. Effective July 31, 2009.

National Endowment for the Arts

NAGS00052 Executive Assistant for the Chairman, National Endowment for the Arts. Effective July 6, 2009.
NAGS00025 Arts Education Counselor to the Senior Deputy Chairman. Effective July 29, 2009.

Department of Housing and Urban Development

DUGS60512 Special Assistant to the Deputy Secretary, Housing and Urban Development. Effective July 6, 2009.
DUGS60701 Special Assistant to the Chief Financial Officer. Effective July 6, 2009.
DUGS60702 Special Assistant to the Chief Financial Officer. Effective July 6, 2009.

Department of Transportation

DTGS60054 Associate Director for Governmental Affairs. Effective July 13, 2009.
DTGS60139 Special Assistant to the Deputy Secretary. Effective July 13, 2009.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–21038 Filed 8–31–09; 8:45 am]

BILLING CODE 6325–39–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 1, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Request for Information Concerning Portfolio Financing.
SBA Form Number: 857.
Frequency: On Occasion.
Description of Respondents: SBIC Investment Companies.
Responses: 2,160.
Annual Burden: 2,160.
Title: Financial Institution Confirmation form.
SBA Form Number: 860.
Frequency: On Occasion.
Description of Respondents: SBIC Investment Companies.
Responses: 1,500.
Annual Burden: 750.
Title: SBA Counseling Evaluation.
SBA Form Number: 1419.
Frequency: On Occasion.
Description of Respondents: Small Business Clients.
Responses: 15,000.
Annual Burden: 2,550.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–20993 Filed 8–31–09; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 154, SEC File No. 270–438, OMB Control No. 3235–0495.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 (17 CFR 230.154) under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act'') permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address (''householding'') to satisfy the applicable prospectus delivery requirements.[1] The purpose of rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the Federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.[2] The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers relying on rule 154 for the householding of prospectuses relating to open-end management investment companies that are registered under the Investment Company Act of 1940 (''mutual funds'') must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and, in the case of issuers that are mutual funds, providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of prospectuses are able to do so.

Although rule 154 is not limited to mutual funds, the Commission believes that it is used mainly by mutual funds and by broker-dealers that deliver prospectuses for mutual funds. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

The Commission estimates that, as of December 2008, there are approximately 1,960 mutual funds, approximately 150 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct-marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 3,000 hours. The Commission estimates that each direct-marketed fund will also spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 150 hours. The Commission estimates that there are approximately 320 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-

[1] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. *See* Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) [15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b); *see also* rule 174 under the Securities Act (17 CFR 230.174) (regarding the prospectus delivery obligation of dealers); rule 15c2–8 under the Securities Exchange Act of 1934 (17 CFR 240.15c2–8) (prospectus delivery obligations of brokers and dealers).

[2] Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. *See* rule 154(b)(4).

dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 6,400 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 320 hours. Therefore, the total number of respondents for rule 154 is 470 (150 mutual funds plus 320 broker-dealers), and the estimated total hour burden is 9,870 hours (3,150 hours for mutual funds plus 6,720 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, 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.*

Dated: August 26, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–21004 Filed 8–31–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28852; 812–13405]

Arrow Investment Advisers, LLC, and Arrow Funds Trust; Notice of Application

August 25, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order that would permit (a) certain open-end management investment companies and their series to issue shares (''Shares'') redeemable in large aggregations (''Creation Unit Aggregations'') only; (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Unit Aggregations; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Applicants: Arrow Investment Advisers, LLC (''Adviser'') and Arrow Funds Trust (''Trust'').

DATES: *Filing Dates:* The application was filed on July 9, 2007 and amended on November 3, 2008, May 28, 2009, and August 21, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 21, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Joe Barrato, Chief Executive Officer, Arrow Investment Advisers, LLC, 2943 Olney-Sandy Spring Road, Suite A, Olney, MD 20832.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel at (202) 551–6868, or Julia K. Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company and is organized as a Delaware statutory trust. The Trust will initially offer three series (''Initial Funds''), each of which will track a global index of equity and fixed income securities. Applicants request that the order (''Order'') apply to the Initial Funds and any existing or future registered open-end management investment company and its series registered under the Act (collectively, with future series of the Trust, the ''Future Funds,'' and together with the Initial Funds, the ''Funds'').[1] Each Future Fund will be (a) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (b) comply with the terms and conditions stated in the application.

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'') and will be the investment adviser to the Initial Funds. The Adviser may enter into sub-advisory agreements with other investment advisers to act as subadvisers to the Funds (''Subadvisers''). Each Subadviser will be registered under the Advisers Act. A broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''), will serve as the principal underwriter and distributor for the Creation Unit Aggregations of Shares (''Distributor'').

3. Each Fund will consist of a portfolio of securities (''Portfolio Securities'') selected to correspond generally to the price and yield performance, before fees and expenses, of a specified securities index

[1] All entities that currently intend to rely on the Order are named as applicants. An Acquiring Fund (as defined below) may rely on the Order only to invest in Funds and not in any other registered investment company.

(''Underlying Index'').[2] Any entity that creates, compiles, sponsors or maintains an Underlying Index (''Index Provider'') is not or will not be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a Fund, the Adviser, any Subadviser, or promoter of a Fund, or a Distributor.

4. The investment objective of each Fund will be to provide investment results, before fees and expenses, that correspond generally to the price and yield performance, of its Underlying Index.[3] The values of the Underlying Indices will be disseminated every 15 seconds each ''Business Day,'' which is defined as any day that a Fund is required to be opened under section 22(e) of the Act. A Fund will utilize either a ''replication'' or ''representative sampling'' strategy which will be disclosed with regard to each Fund in its prospectus (''Prospectus'').[4] A Fund using a replication strategy will invest in substantially all of the Component Securities in its Underlying Index in approximately the same proportions as in the Underlying Index.[5] A Fund may use a representative sampling strategy pursuant to which it will invest in a significant number but not all of the Component Securities of its Underlying Index. This may be the case when there are practical difficulties or substantial costs involved in compiling an entire Underlying Index or when a Component Security is illiquid. Applicants anticipate that a Fund that utilizes a representative sampling strategy will not track the performance of its Underlying Index with the same degree of accuracy as a Fund employing the replication strategy. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. Shares will be sold at a price between $25 and $250 in Creation Unit Aggregations which will have an initial price range of $1,000,000 to $10,000,000. All orders to purchase Creation Unit Aggregations must be placed with the Distributor, by or through a party that has entered into an agreement with the Distributor (''Authorized Participant''). The Distributor will be responsible for transmitting the orders to the Funds. An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DCrdquo;, and such participant, ''DCParticipant''). Shares generally will be sold in Creation Unit Aggregations in exchange for an in-kind deposit by the purchaser of a portfolio of specified securities (the ''Deposit Securities''), together with the deposit of a specified cash payment (''Cash Amount'' and collectively with the Deposit Securities, ''Creation Deposit''). The Cash Amount is generally an amount equal to the difference between (a) the net asset value (''NAV'') (per Creation Unit Aggregation) of a Fund and (b) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities.[6] Each Fund reserves the right to permit, under certain circumstances, a purchaser of Creation Unit Aggregations to substitute cash in lieu of depositing some or all of the requisite Deposit Securities.

6. An investor acquiring or redeeming a Creation Unit Aggregation from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or redemption of Creation Unit Aggregations.[7] The exact amounts of Transaction Fees relevant to each Fund (including the maximum Transaction Fees) will be fully disclosed in the Prospectus of such Fund. The method for calculating the Transaction Fees will be disclosed in each Fund's statement of additional information (''SAI''). The Distributor will furnish a Fund's Prospectus and a confirmation to those placing purchase orders and maintain a record of the purchase orders, confirmations of purchase orders and the instructions given to the Fund to implement the delivery of Shares.

7. Purchasers of Shares in Creation Unit Aggregations may hold such Shares or sell such Shares into the secondary market. Shares will be listed and traded on an Exchange. It is expected that one or more member firms of a Primary Listing Exchange will be designated to act as a specialist or market maker and maintain a market for Shares trading on such Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

8. Applicants expect that Purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs. A specialist or market maker also may purchase Creation Unit Aggregations of Shares for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[8] Applicants expect that the price at which Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase Creation Unit Aggregations at NAV, which should ensure that Shares do not trade at a material discount or premium to NAV.

9. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit Aggregation. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit

[2] The Underlying Indexes for the Initial Funds are the Dow Jones Global Relative Risk Moderate Portfolio Index, Dow Jones Relative Risk Moderately Aggressive Portfolio Index and the Dow Jones Global Risk Aggressive Portfolio Index.

[3] Applicants represent that each Fund will invest at least 90% or 80% of its total assets in the component securities that comprise its Underlying Index (''Component Securities'') and the depositary receipts representing such securities. ''Depositary Receipts'' will typically be American Depositary Receipts, but may include Global Depositary Receipts and Euro Depositary Receipts. Each Fund also may invest up to 10% or 20%, as the case may be, of its total assets in futures contracts, options on future contracts, options and swaps, as well as cash and cash equivalents and other investment companies.

[4] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[5] Under the representative sampling strategy, the Adviser will seek to construct a Fund's portfolio so that its fundamental investment characteristics and liquidity measures perform like those of the Underlying Index.

[6] The Trust will sell Creation Unit Aggregations of each Fund only on a Business Day. Each Business Day, prior to the opening of trading on the Primary Listing Exchange, the list of names and amount of each security constituting the current Deposit Securities and the Cash Amount, effective as of the previous Business Day, will be made available. Any national securities exchange (as defined in section 2(a)(26) of the Act) (''Exchange'') on which Shares are listed (''Primary Listing Exchange'') will disseminate, every 15 seconds during its regular trading hours, through the facilities of the Consolidated Tape Association, an estimated intra-day NAV of Shares (which will include the previous day's Cash Amount).

[7] Where a Fund permits a purchaser to substitute cash in lieu of depositing one or more Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost to the Fund of Acquiring such Deposit Securities.

[8] Shares will be registered in book-entry form only. DCor its nominee will be the registered owner of all outstanding Shares. DCor DCParticipants will maintain records reflecting beneficial owners of Shares.

Aggregation generally will receive (a) Portfolio Securities designated to be delivered for Creation Unit Aggregation redemptions (''Redemption Securities'') on the date that the request for redemption is submitted and (b) the Cash Amount.[9] An investor may receive the cash equivalent of a Fund Security in certain circumstances.

10. Neither the Trust nor any individual Fund will be marketed or otherwise held out an ''open-end investment company'' or a ''mutual fund.'' Instead, each Fund will be marketed as an ''exchange traded fund,'' an ''investment company,'' a ''fund,'' or a ''trust.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Unit Aggregations or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from the Fund in Creation Unit Aggregations only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Trust or each Fund, as applicable, will provide copies of their annual and semi-annual shareholder reports to DCParticipants for distribution to shareholders.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a ''redeemable security'' as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust or a Fund to register as an open-end management investment company and issue Shares that are redeemable in Creation Unit Aggregations only. Applicants state that investors may purchase Shares in Creation Unit Aggregations from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, the market price of an individual Fund Share will not vary much from its NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or reacquiring a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and who could pay investors a little more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not directly involve Fund assets and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Funds that are based on global equity indices, global fixed income indices or global indices of equity and fixed income securities (collectively, ''Global Funds'') and Funds that are based on international equity indices,

[9] As a general matter, the Deposit Securities and Redemption Securities will correspond pro rata to the Portfolio Securities held by each Fund although in limited circumstances Deposit Securities and Redemption Securities may not be the same on the same day. In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act of 1933 (''Securities Act''), the Funds will comply with the conditions of rule 144A. The Prospectus will also state that an Authorized Participant that is not a ''Qualified Institutional Buyer'' as defined in rule 144A under the Securities Act will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

international fixed income indices or a blend of international, equity and fixed income indices (collectively, ''International Funds'') is contingent not only on the settlement cycle of the United States securities markets, but also on the delivery cycles present in foreign markets in which Global Funds and International Funds invest. Applicants state that delivery cycles for transferring Portfolio Securities to redeeming investors coupled with local market holiday schedules will, under certain circumstances, require a delivery process longer than seven calendar days. Applicants request relief under section 6(c) of the Act from section 22(e) to permit the Global Funds and International Funds to pay redemption proceeds up to 12 calendar days after the tender of any Creation Unit Aggregations for redemption. Except as disclosed in the relevant Fund's Prospectus and/or SAI, applicants expect that each Global Fund and International Fund will be able to deliver redemption proceeds within seven days.[10] With respect to future Global Funds and International Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the Prospectus and/or SAI will disclose those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds. Applicants are not seeking relief from section 22(e) with respect to Global Funds and International Funds that do not effect creations and redemptions of Creation Unit Aggregations in-kind.

Section 12(d)(1)

9. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request an exemption to permit management investment companies (''Acquiring Management Companies'') and unit investment trusts (''Acquiring Trusts'') registered under the Act that are not advised or sponsored by the Adviser or any entity controlling, controlled by, or under common control with the Adviser and are not part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (collectively, ''Acquiring Funds'') to acquire Shares of a Fund beyond the limits of section 12(d)(1)(A). No Acquiring Fund will be in the same group of investment companies as the Funds. In addition, applicants seek relief to permit a Fund or a broker-dealer registered under the Exchange Act to sell Shares to an Acquiring Fund in excess of the limits of section 12(d)(1)(B).

11. All Acquiring Management Companies will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the ''Acquiring Fund Adviser'') and may be sub-advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Acquiring Fund Subadviser''). Any investment adviser to an Acquiring Fund will be registered under the Advisers Act. Each Acquiring Trust will be sponsored by a sponsor (''Sponsor'').

12. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

13. Applicants believe that neither the Acquiring Funds nor an Acquiring Fund Affiliate would be able to exert undue influence over the Funds.[11] To limit the control that an Acquiring Fund may have over a Fund, applicants propose a condition prohibiting an Acquiring Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with an Acquiring Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by an Acquiring Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with an Acquiring Fund Adviser or Sponsor (''Acquiring Fund Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Acquiring Fund Subadviser, any person controlling, controlled by or under common control with the Acquiring Fund Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Subadviser or any person controlling, controlled by or under common control with the Acquiring Fund Subadviser (''Acquiring Fund's Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, employee or Sponsor of an Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Adviser, Acquiring Fund Subadviser, employee, or Sponsor is an affiliated person

[10] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

[11] An ''Acquiring Fund Affiliate'' is an Acquiring Fund Adviser, Acquiring Fund Subadviser, Sponsor, promoter, and principal underwriter of an Acquiring Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is the investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

(except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

14. Applicants assert that the proposed conditions address any concerns regarding excessive layering of fees. The board of directors or trustees of any Acquiring Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''independent directors or trustees''), will find that the advisory fees charged to the Acquiring Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. In addition, except as provided in condition 15, an Acquiring Fund Adviser or a trustee (''Trustee'') or Sponsor of an Acquiring Trust will, as applicable, waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received by the Acquiring Fund Adviser or Trustee or Sponsor or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Acquiring Fund in the Fund. Applicants state that any sales charges or service fees charged with respect to Shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the National Association of Securities Dealers (''NASD'').[12]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. To ensure that Acquiring Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Acquiring Fund that intends to invest in a Fund in reliance on the requested order will enter into an Acquiring Fund Agreement between the Fund and the Acquiring Fund requiring the Acquiring Fund to adhere to the terms and conditions of the requested order. The Acquiring Fund Agreement also will include an acknowledgement from the Acquiring Fund that it may rely on the Order only to invest in the Funds and not in any other investment company.

16. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Unit Aggregations by an Acquiring Fund. To the extent that an Acquiring Fund purchases Shares in the secondary market, a Fund would still retain its ability to reject initial purchases of Shares made in reliance on the requested order by declining to enter into the Acquiring Fund Agreement prior to any investment by an Acquiring Fund in excess of the limits of section 12(d)(1)(A).

Sections 17(a)(1) and (2) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''Second-Tier Affiliate''), from selling any security to or acquiring any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities.

18. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons to effectuate in-kind purchases and redemptions with a Fund when they are affiliated persons of the Fund or Second-Tier Affiliates solely by virtue of one or more of the following: (a) holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the Shares of one or more other registered investment companies (or series thereof) advised by the Adviser.

19. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from acquiring or redeeming Creation Unit Aggregations through ''in-kind'' transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons, or Second-Tier Affiliates, of a Fund to effect a transaction detrimental to other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of an Acquiring Fund to sell its Shares to and redeem its Shares from an Acquiring Fund through in-kind Creation Unit Aggregation transactions with the Acquiring Fund.[13] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Acquiring Fund for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[14] Applicants believe that any proposed transactions directly between the Funds and Acquiring Funds will be consistent with the policies of each Acquiring Fund. The purchase of Creation Unit Aggregations by an Acquiring Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Unit Aggregations directly from a Fund to represent that the purchase of Creation Unit Aggregations from a Fund by an Acquiring Fund will be accomplished in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement.

[12] Any references to Conduct Rule 2830 of the NASD include any successor or replacement rule to Conduct Rule 2830 that may be adopted by the Financial Industry Regulatory Authority.

[13] Applicants acknowledge that receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

[14] Applicants believe that an Acquiring Fund will purchase Shares in the secondary market and will not purchase or redeem Creation Unit Aggregations directly from a Fund. However, the requested relief would apply to direct sales of Creation Unit Aggregations by a Fund to an Acquiring Fund and redemptions of those Shares.

Applicants' Conditions

Applicants agree that any order of granting the requested relief will be subject to the following conditions:[15]

ETF Relief

1. Each Fund's Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Funds, and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an Acquiring Fund Agreement with the Fund regarding the terms of the investment.

2. As long as the Trust or a Fund operates in reliance on the requested order, the Shares will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund only in Creation Unit Aggregations. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Unit Aggregations only.

4. The Web site for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such closing price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or the life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund also will include: (a) The information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund): (i) The cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based exchange-traded funds.

Section 12(d)(1) Relief

7. The members of the Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares in the same proportion as the vote of all other holders of the Shares. This condition does not apply to the Acquiring Fund Subadvisory Group with respect to a Fund for which the Acquiring Fund Subadviser or a person controlling, controlled by, or under common control with the Acquiring Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

9. The board of directors or trustees of an Acquiring Management Company, including the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Adviser and Acquiring Fund Subadviser are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in Shares exceeds the limits in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of a Fund (''Board''), including a majority of the independent directors or trustees will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

12. The Board, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of

[15] *See* note 4, *supra*.

procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

13. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board were made.

14. Before investing in Shares in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment adviser(s) or their Sponsors or Trustees, as applicable, understand the terms and conditions of the Order, and agree to fulfill their responsibilities under the Order. At the time of its investment in Shares in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the Order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

15. The Acquiring Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b-1 under the Act) received from the Fund by the Acquiring Fund Adviser, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Adviser, Trustee or Sponsor, or its affiliated person by a Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Subadviser will waive fees otherwise payable to the Acquiring Fund Subadviser, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Subadviser, or an affiliated person of the Acquiring Fund Subadviser, other than any advisory fees paid to the Acquiring Fund Subadviser or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Subadviser. In the event that the Acquiring Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

17. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20983 Filed 8–31–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 3, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, September 3, 2009 will be: Institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: August 27, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–21166 Filed 8–28–09; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Brooke Corporation; Order of Suspension of Trading

August 28, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Brooke Corporation because it has not filed any periodic reports with the Commission since the period ended June 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange

Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, August 28, 2009 through 11:59 p.m. EDT, on September 11, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–21142 Filed 8–28–09; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60569; File No. SR–BATS–2009–028]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, Entitled ''Orders and Modifiers,'' and BATS Rule 11.13, Entitled ''Order Execution.''

August 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 21, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rules 11.9, entitled ''Orders and Modifiers,'' and 11.13, entitled ''Order Execution,'' to remove an order type (a ''BATS Only BOLT Order'') and processing method (''BOLT Routing'') that each provide an optional display period through which a marketable order is displayed to Exchange Users (and market data recipients) for a brief period of time designated by the Exchange prior to being routed, cancelled, or posted to the BATS Book.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to remove language which allows marketable orders to be displayed to Exchange Users (and market data recipients) prior to being routed, cancelled, or posted to the BATS Book. Specifically, the Exchange currently offers both an order type and a pre-routing processing method that, after first seeking to execute against the BATS Book, permit the order to be displayed as a marketable order at the NBB for a sell order or the NBO for a buy order to Exchange Users and market data recipients for a brief, variable amount of time (not to exceed 500 milliseconds) for potential execution.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, 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 imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange requests this waiver because it plans to stop supporting the order type and pre-routing processing method that are being deleted through the proposal as of September 1, 2009.[11] Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative on September 1, 2009.[12]

At any time within 60 days of the filing of such proposed rule change the

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[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] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *Id.*

[11] *See* SR–BATS–2009–028, Item 7.

[12] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BATS–2009–028 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 No. SR–BATS–2009–028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2009–028 and should be submitted on or before September 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20988 Filed 8–31–09; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6748]

60–Day Notice of Proposed Information Collection: DS 3072, Emergency Loan Application and Evacuation Documentation, OMB Control Number 1405–0150

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Emergency Loan Application and Evacuation Documentation.
- *OMB Control Number:* OMB Control Number 1405–0150.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS).
- *Form Number:* DS 3072.
- *Respondents:* U.S. Citizens applying for emergency loan assistance or evacuation processing.
- *Estimated Number of Respondents:* 1,176.
- *Estimated Number of Responses:* 1,176.
- *Average Hours Per Response:* 10 minutes.
- *Total Estimated Burden:* 196 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from September 1, 2009.

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

- *E-mail: ASKPRI@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, CA/OCS/PRI, SA–29, 4th Floor, Washington, DC 20520.
- *Fax:* 202–736–9111.
- *Hand Delivery or Courier:* U.S. Department of State, CA/OCS/PRI, 2100 Pennsylvania Avenue, 4th Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Derek A. Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA–29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736–9082 or *ASKPRI@state.gov.*

SUPPLEMENTARY INFORMATION: *We are soliciting public comments to permit the Department to:*

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The purpose of the DS–3072 is to process emergency loans for destitute citizens and to document the safe and efficient evacuation of private United States citizens, dependents and third country nationals from abroad. The information will be used to process the emergency loan, facilitate reception and resettlement assistance in the U.S. and for debt collection. Respondents are private U.S. citizens and their dependents abroad who are destitute and in need of repatriation to the U.S.; private U.S. citizens and their dependents abroad who are in need of emergency medical and dietary assistance who are unable to obtain such services otherwise; and private U.S. citizens abroad and their dependents and third country nationals who are in need of evacuation when their lives are endangered by war, civil unrest, or natural disaster.

Methodology

The Bureau of Consular Affairs will be posting this form on Department of

State websites to give respondents the opportunity to fill the form out online or print out the form and fill it out manually and submit the form in person or by fax or mail.

Dated: July 10, 2009.

Mary Ellen Hickey,

Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–21088 Filed 8–31–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6747]

Culturally Significant Object Imported for Exhibition Determinations: ''Luc Tuymans''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object in the exhibition: ''Luc Tuymans,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Wexner Center for the Arts, Columbus, OH, from on or about September 20, 2009, until on or about January 3, 2010; San Francisco Museum of Modern Art, San Francisco, CA, from on or about February 13, 2010, until on or about May 16, 2010; Dallas Museum of Art, Dallas, TX, from on or about June 13, 2010, until on or about September 6, 2010; Museum of Contemporary Art, Chicago, IL, from on or about October 2, 2010, until on or about January 9, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The address is U.S. Department of State, L/PD, SA–5, 2200 C Street, NW., Suite 5H03, Washington, DC 20522–0505.

Dated: August 25, 2009

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–21086 Filed 8–31–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6439, Notice No. 20]

Adjustment of Nationwide Significant Risk Threshold

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Adjustment of Nationwide Significant Risk Threshold.

SUMMARY: In accordance with Appendix D to Title 49 Code of Federal Regulations (CFR) part 222, Use of Locomotive Horns at Highway-Rail Grade Crossings, FRA is updating the Nationwide Significant Risk Threshold (NSRT). This action is needed to ensure that the public has the proper threshold of permissible risk for calculating quiet zones established in relationship to the NSRT. This is the third update to the NSRT, which is being increased to 18,775 from 17,610.

DATES: The effective date is September 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Ries, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6299 or e-mail: *Ronald.Ries@dot.gov*); or Kathryn Shelton, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6038 or e-mail: *Kathryn.Shelton@dot.gov*).

SUPPLEMENTARY INFORMATION:

Background

The NSRT is simply an average of the risk indexes for gated public crossings, nationwide, where train horns are routinely sounded. FRA developed this risk index to serve as one threshold of permissible risk for quiet zones established under this rule across the Nation. Thus, a community that is trying to establish and/or maintain its quiet zone pursuant to 49 CFR part 222 can compare the Quiet Zone Risk Index calculated for its specific crossing corridor to the NSRT to determine whether sufficient measures have been taken to compensate for the excess risk that results from prohibiting routine sounding of the locomotive horn. (Alternatively, a community can establish its quiet zone in comparison to the Risk Index With Horns, which is a corridor-specific measure of risk to the motoring public, when locomotive horns are routinely sounded at every public highway-rail grade crossing within the quiet zone.)

In 2006, when the final rule titled, ''Use of Locomotive Horns at Highway-Rail Grade Crossings,'' was amended, the NSRT was 17,030 (71 FR 47614, Aug. 17, 2006). In 2007, FRA recalculated the NSRT to be 19,047 (72 FR 14850, Mar. 29, 2007). In 2008, FRA recalculated the NSRT to be 17,610 (73 FR 30661, May 28, 2008).

New NSRT

Using collision data from 2004 to 2008, FRA has recalculated the NSRT based on formulas identified in Appendix D to 49 CFR part 222. In making this recalculation, FRA noted that the total number of gated, non-whistle-ban crossings was 39,065.

$$\text{Fatality Rate} = \frac{\text{Fatalities}}{\text{Fatal Incidents} = 287} = \frac{358}{1.2474}$$

$$\text{Injury Rate} = \frac{\text{Injuries in Injury-Only Incidents}}{\text{Injury-Only Incidents} = 708} = \frac{1008}{1.4237}$$

Applying the fatality rate and injury rate to the probable number of fatalities and casualties predicted to occur at each of the 39,065 identified crossings and the predicted cost of the associated injuries and fatalities, FRA calculates the NSRT to be 18,775.

Issued in Washington, DC, on August 25, 2009.

Jo Strang,

Associate Administrator for Railroad Safety/ Chief Safety Officer.

[FR Doc. E9–20966 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent to Prepare an Environmental Impact Statement for Proposed Transit Improvements to the Orange Line, Cook County, IL

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The FTA, as the Federal lead agency, and the Chicago Transit Authority (CTA) intend to prepare an Environmental Impact Statement (EIS) for the Orange Line Extension Project in Cook County, Illinois. CTA operates the rapid transit system in Chicago, Cook County, Illinois. The proposed project, described more completely within, would extend the Orange Line, a heavy rail transit line, to connect Midway Station at the Midway International Airport to the Ford City shopping center. The purpose of this Notice of Intent is to alert interested parties regarding the intent to prepare the EIS and to provide information on the nature of the proposed project and possible alternatives to invite public participation in the EIS process.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to CTA on or before October 27, 2009. See **ADDRESSES** below for the address to which written public comments may be sent. A public scoping meeting to accept comments on the scope of the EIS will be held on the following date:

- Monday, September 21, 2009; 6 p.m. to 8 p.m.; at the Hancock College Preparatory High School, 4034 W. 56th St., Chicago, IL 60629.

The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the scoping meeting should contact Mr. Darud Akbar, Government and Community Relations Officer, at 312–681–2708 or *dakbar@transitchicago.com*, five days prior to the meeting.

Scoping materials describing the project purpose and need and the alternatives proposed for analysis will be available at the meetings and on the CTA Web site *http://www.transitchicago.com/OrangeEIS.* Paper copies of the scoping materials may also be obtained from Mr. Darud Akbar, Government and Community Relations Officer, at 312–681–2708 or *dakbar@transitchicago.com.* An interagency scoping meeting will be held on Thursday, September 24 at 1:30 p.m. at CTA Headquarters, in Conference Room 2C, 567 W. Lake Street, Chicago, IL 60661. Representatives of Native American tribal governments and of all Federal, State, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Mr. Jeffrey Busby, General Manager, Strategic Planning, Chicago Transit Authority, P.O. Box 7602, Chicago, IL 60680–7602, or via e-mail at *OrangeExtension@transitchicago.com.*

FOR FURTHER INFORMATION CONTACT: Mr. David Werner, Community Planner, Federal Transit Administration, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606, phone 312–353–3879, e-mail *David.Werner@dot.gov.*

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and CTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should address (1) alternatives that may better achieve the project's need and purposes at less cost or with fewer adverse impacts, and (2) any significant environmental impacts relating to the alternatives.

National Environmental Policy Act (NEPA) ''scoping'' (40 CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including (1) documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

Purpose and Need for the Project

The purpose of the Orange Line Extension project is to improve access to the existing Orange Line for southwest side and southwest suburban residents and businesses, support the area's ongoing economic development efforts, and strengthen the competiveness of transit in the reverse commute market.

The need for the project is based on the following considerations: access to the Orange Line is currently constrained by limited parking availability; access to the Orange Line by bus or auto is unreliable due to congestion approaching the existing terminal station; and few uncongested roadways are available to access the current Orange Line terminal because of wider than usual arterial street spacing, which limits mobility for residents and businesses.

Project Location and Environmental Setting

The proposed heavy rail transit (HRT) project area lies about 10 miles southwest of the Chicago Central Area (commonly referred to as the ''Loop''). The limits of the project area are 59th Street on the north and 79th Street on the south. Midway International Airport is located in the northwestern portion of the project area.

The project area includes parts of the community areas of Ashburn, Clearing, and West Lawn within the City of Chicago, and is adjacent to the Village of Bedford Park and the City of Burbank. The project area is highly developed, with significant residential (primarily single family), industrial, transportation

and commercial (retail and office) developments.

The locally preferred alternative (LPA) for the proposed Orange Line Extension project was approved by the Chicago Transit Board for further study in the EIS on August 12, 2009. The proposed Orange Line Extension would extend the heavy rail transit line from Midway Station at the Midway International Airport south along the Belt Railway Company (BRC) right-of-way from 59th Street to Marquette Road, cross the BRC Clearing Yard and terminate on Cicero Avenue. The extension would include 2.3 new route miles of rapid transit to the existing Orange Line and one additional station at approximately 7600 S. Cicero Avenue, with new bus terminal and parking facilities.

Alternatives

The Orange Line Extension Final Alternatives Analysis Report (2009) prepared by CTA identified three alternatives for further consideration in the EIS. The three alternatives include: a No Build Alternative, Transportation System Management (TSM) Alternative, and the Fixed Guideway Alternative.

No-Build Alternative: The No Build Alternative is defined as the existing transportation system, plus any committed transportation improvements. Committed transportation improvements include projects that are already in the Chicago Metropolitan Agency for Planning (CMAP) financially constrained Transportation Improvement Program (TIP). The Orange Line project area has one road improvement project included in the FY 2007–2012 TIP; the Cicero Avenue Smart Corridor Project from 37th Street to 63rd Street scheduled for completion in 2009.

Bus transit service under the No Build Alternative would be focused on the preservation of existing services and projects. The transit network within the project area is projected to be substantially the same as it is now. All elements of the No Build Alternative are included in each of the other alternatives.

Transportation System Management (TSM) Alternative: A TSM Alternative is proposed because it is required as part of the New Starts evaluative process; in this case, it does not meet the purposes of and need for the proposed project. The TSM Alternative is Bus Rapid Transit (BRT) that would operate west on 59th Street from the 59th Street Midway Station bus terminal to Cicero Avenue, and then south on Cicero Avenue from 59th Street to approximately 76th Street. Proposed BRT service would operate in mixed traffic with traffic signal priority on the Cicero Avenue segment.

The TSM Alternative is 2.3 miles long and would not include any intermediate stops. There would be no exclusive lanes along the Cicero Avenue portion of the route. A new park and ride facility would be constructed at the proposed terminal stop at approximately 7600 S. Cicero. Bus route 67 67th/69th/71st would be re-routed to terminate at the new Ford City Station.

Fixed Guideway Alternative/Locally Preferred Alternative (LPA): The proposed LPA would operate partly in a trench and partly at-grade along the BRC right-of-way between the existing Midway station and approximately 6400 south, where it would transition to an elevated structure above Marquette Road. The proposed route would travel under 59th Street and 63rd Street allowing those cross streets to remain open to traffic. It then would veer to the southwest over the BRC Clearing Yard and then continue south on an elevated structure in the median of Cicero Avenue to a new Ford City terminal station located on Cicero Avenue at approximately 76th Street.

The LPA is 2.3 miles long and would not include any intermediate stops. The conceptual alignment design for the elevated structure at Marquette Road would allow for a future station in that vicinity. The Ford City terminal station would include a park-and-ride facility and an improved bus terminal. The alternative assumes that Pace buses from the south would continue to directly serve Midway Station. Route 67 67th/69th/71st would be re-routed to terminate at the new proposed Ford City terminal station.

Two alignment options along Cicero Avenue to 76th Street will be evaluated; an alignment above the median of Cicero Avenue and an alignment located directly east of the Cicero Avenue right-of-way. The alignment over the median of Cicero Avenue would have fewer property acquisition costs and impacts to existing businesses; however, both alignment options will be studied further in the EIS.

Possible Effects

The purpose of this EIS process is to study, in a public setting, the effects of the proposed project and its alternatives on the quality of the human environment. Areas of investigation for transit projects generally include, but are not limited to: land use, development potential, land acquisition and displacements, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species; investigation may reveal that the proposed project will not affect or affect substantially many of those areas. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and CTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and CTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on CTA's Web site *http://www.transitchicago.com/OrangeEIS.* The public involvement program includes a full range of activities including maintaining the project Web page on the CTA Web site and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the project's public participation plan.

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent

with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received (preferably in advance of printing), FTA and its grantees will distribute only the executive summary of the environmental document together with a Compact Disc of the complete environmental document. A complete printed set of the environmental document is available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document is also available on the grantee's Web page.

CTA may seek New Starts funding for the proposed project under 49 United States Code 5309 and will, therefore, be subject to New Starts regulations (49 Code of Federal Regulations (CFR) Part 611). The New Starts regulations also require the submission of certain project-justification information to support a request to initiate preliminary engineering. This information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771).

Issued on: August 24, 2009.

Marisol R. Simon,

Regional Administrator, Federal Transit Administration, Region V.

[FR Doc. E9–20965 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for Proposed Transit Improvements to the Yellow Line, Cook County, IL

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The FTA, as the Federal lead agency, and the Chicago Transit Authority (CTA) intend to prepare an environmental impact statement (EIS) for the Yellow Line Extension Project in Cook County, Illinois. CTA operates the rapid transit system in Chicago, Cook County, Illinois. The proposed project, described more completely within, would extend the Yellow Line, a heavy rail transit line, to connect the Dempster Street Station to Old Orchard Road. The purpose of this Notice of Intent is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives and to invite public participation in the EIS process.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to CTA on or before October 27, 2009. See **ADDRESSES** below for the address to which written public comments may be sent. A public scoping meeting to accept comments on the scope of the EIS will be held on the following date:

- Wednesday, September 23, 2009; 6 p.m. to 8 p.m.; at the Oakton Community Center, 4701 Oakton Street, Skokie, IL 60076.

The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the scoping meeting should contact Mr. Darud Akbar, Government and Community Relations Officer, at 312–681–2708 or *dakbar@transitchicago.com,* five days prior to the meeting.

Scoping materials describing the project purpose and need and the alternatives proposed for analysis will be available at the meetings and on the CTA Web site *http://www.transitchicago.com/YellowEIS.* Paper copies of the scoping materials may also be obtained from Mr. Darud Akbar, Government and Community Relations Officer, at 312–681–2708 or *dakbar@transitchicago.com.* An interagency scoping meeting will be held on Thursday, September 24 at 8 a.m. at CTA Headquarters, in Conference Room 2C, 567 W. Lake Street, Chicago, IL 60661. Representatives of Native American tribal governments and of all Federal, State, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Mr. Jeffrey Busby, General Manager, Strategic Planning, Chicago Transit Authority, P.O. Box 7602, Chicago, IL 60680–7602, or via e-mail at *YellowExtension@transitchicago.com.*

FOR FURTHER INFORMATION CONTACT: Mr. David Werner, Community Planner, Federal Transit Administration, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606, phone 312–353–3879, e-mail *david.werner@dot.gov.*

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and CTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should address (1) Alternatives that may better achieve the project's need and purposes at less cost or with fewer adverse impacts, and (2) any significant environmental impacts relating to the alternatives.

National Environmental Policy Act (NEPA) ''scoping'' (40 CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including (1) Documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

Purpose and Need for the Project

The purpose of the Yellow Line Extension project is to improve transit accessibility and provide mobility options by better utilizing existing transportation infrastructure capacity. The investment would also support the Village of Skokie's land use plans.

The need for the project is based on the following considerations: There is a significant reverse commute to the project area that is not well served by the current Yellow Line terminal location; travelers on the existing system must make multiple transfers to reach activity and employment centers in the project area; and transit alternatives will allow a portion of study area trips to avoid continued growth in project area arterial street and expressway congestion. In addition, proposed extensions of the CTA Yellow Line from its current terminus at Dempster Street are part of the Chicago region's long range transportation plan developed by the Chicago Metropolitan Agency for Planning (CMAP).

Project Location and Environmental Setting

The proposed heavy rail transit (HRT) project area lies about 12 miles north of the Chicago Central Area (commonly referred to as the ''Loop''). The limits of the project area are Dempster Street on the south and Old Orchard Road on the north. The project area is bounded by Interstate 94 (Edens Expressway) on the west and lies within the Village of Skokie. The project area is highly developed, with significant residential (primarily single family), institutional facilities (government offices and schools), transportation and commercial (retail and office) developments.

The locally preferred alternative (LPA) for the proposed Yellow Line Extension project was approved by the Chicago Transit Board for further study in the EIS on August 12, 2009. The proposed Yellow Line Extension would extend the heavy rail transit line from Dempster Street Station, the current terminus of the Yellow Line, north along the Union Pacific Railroad (UPRR) right-of-way from Dempster Street to the vicinity of Old Orchard Road. The extension would include 1.6 new route miles of rapid transit added to the existing Yellow Line, reconfiguration of the existing Dempster Street Station, and a new station in the vicinity of Old Orchard Road with bus access and parking facilities.

Alternatives

The Yellow Line Extension Final Alternatives Analysis Report (2009) prepared by CTA identified three alternatives for further consideration in the EIS. The three alternatives include: A No Build Alternative, Transportation System Management (TSM) Alternative, and the Fixed Guideway Alternative (the LPA).

No Build Alternative: The No Build Alternative is defined as the existing transportation system, plus any committed transportation improvements. Committed transportation improvements include projects that are already in the CMAP financially constrained Transportation Improvement Program (TIP). The Yellow Line project area has a number of projects included in the FY 2007—2012 TIP.

There are three intersection improvements along Skokie Boulevard in the TIP including the intersections of Dempster Street, Golf Road and Old Orchard Road. Road improvements in the TIP that would most affect the Yellow Line extension project area are the widening of Old Orchard Road from Harms Road to Skokie Boulevard and the expansion of the northbound Edens off-ramp lanes. In addition to a variety of resurfacing projects, Dempster Street is scheduled to be reconstructed and widened to Central Road.

Bus transit service under the No Build Alternative would be focused on the preservation of existing services and projects. Although outside the project area, a significant transit improvement included in the No Build Alternative is the construction of a Yellow Line station at Oakton Street to serve the Skokie downtown and surrounding developments. All elements of the No Build Alternative are included in each of the other alternatives.

Transportation System Management (TSM) Alternative: A TSM Alternative is proposed because it is required as part of the New Starts evaluative process; in this case, it does not meet the purposes of and need for the proposed project. The TSM Alternative is Bus Rapid Transit (BRT) that would operate on a 1.7 mile alignment between the Yellow Line Dempster Street Station and Westfield Shoppingtown Old Orchard Mall via Dempster Street, Niles Center Road, Skokie Boulevard, Golf Road, and Lavergne Avenue. Proposed BRT service would operate in mixed traffic with traffic signal priority on the Dempster Street, Niles Center Road, Skokie Boulevard, and Golf Road portion of the route.

The TSM Alternative would not include any intermediate stops. There would be no exclusive lanes along any portion of the route. The terminal stop would be at the existing bus transfer station located on the east side of Old Orchard Mall. A new park and ride facility would be constructed near the proposed terminal stop at Old Orchard Road. The TSM alternative assumes that all bus routes in the study area will continue current operations.

Fixed Guideway Alternative/LPA: The proposed LPA would proceed northbound on a single track alignment within the UPRR right-of-way from Dempster Street to the area north of Golf Road. Beginning north of Golf Road, the alignment curves east, paralleling the east side of the Edens Expressway on an elevated profile to the proposed terminal location on the south side of Old Orchard Road. The elevated profile eliminates grade crossings between Dempster Street and Old Orchard Road.

The LPA would include a new station at Dempster Street to accommodate longer length trains and support bi-directional ridership demands. The elevated alignment would place the new station centered above Dempster Street providing enhanced station accessibility from the north and south parking areas without requiring pedestrians to cross Dempster Street. Bus transfer, taxi, entrance and parking areas at the Dempster Station would be reconfigured for the new elevated station.

The terminal station would be located east of the expressway and in the northwest portion of the Niles North High School (NNHS) property. The transit station and associated facilities would displace up to 230 parking spaces currently in the NNHS lot to the north of the campus. These spaces would be replaced by a multi-story parking structure with dedicated school parking (to replace all displaced parking spaces) and dedicated commuter parking.

The LPA is 1.6 miles long and would not include any intermediate stops. CTA and Pace bus services would be rerouted to pass through an off-street facility on the east side of the rapid transit station and continue to the existing bus transfer station at Old Orchard Mall.

No existing residences, businesses, or park/recreational areas would have to be acquired to accommodate the HRT single-track extension between Dempster Street and Golf Road. Some right-of-way would need to be acquired from the Illinois Department of Transportation along the Edens Expressway and land would need to be acquired from the NNHS property.

Possible Effects

The purpose of this EIS process is to study, in a public setting, the effects of the proposed project and its alternatives on the quality of the human

environment. Areas of investigation for transit projects generally include, but are not limited to: Land use, development potential, land acquisition and displacements, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species; investigation may reveal that the proposed project will not affect or affect substantially many of those areas. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and CTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and CTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on CTA's Web site *http://www.transitchicago.com/YellowEIS*. The public involvement program includes a full range of activities including maintaining the project webpage on the CTA Web site and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the project's public participation plan.

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received (preferably in advance of printing), FTA and its grantees will distribute only the executive summary of the environmental document together with a Compact Disc of the complete environmental document. A complete printed set of the environmental document is available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document is also available on the grantee's Web page.

CTA may seek New Starts funding for the proposed project under 49 United States Code 5309 and will, therefore, be subject to New Starts regulations (49 Code of Federal Regulations (CFR) part 611). The New Starts regulations also require the submission of certain project-justification information to support a request to initiate preliminary engineering. This information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771).

Issued on August 24, 2009.

Marisol R. Simon,

Regional Administrator, Federal Transit Administration, Region V.

[FR Doc. E9–20964 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Orange County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a draft Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Orange County, California.

DATES: The public scoping meetings will be held on the following dates:

(1) Tuesday, September 22, 2009, 6 PM–8 PM, Fountain Valley.

(2) Wednesday, September 23, 2009, 6 PM–8 PM, Huntington Beach.

(3) Wednesday, September 30, 2009, 6 PM–8 PM, Westminster.

(4) Thursday, October 01, 2009, 6 PM–8 PM, Rossmoor.

The final day to submit comments is October 8, 2009.

ADDRESSES: The four public scoping meetings will be held at the following locations.

(1) Fountain Valley Senior and Community Center, 17967 Bushard St., Fountain Valley, CA 92708.

(2) Huntington Beach Library, 7111 Talbert Avenue, Huntington Beach, CA 92648.

(3) Westminster Community Center—A/B Room, 8200 Westminster Avenue, Westminster, CA 92683.

(4) Rush Park Auditorium, 3021 Blume Drive, Rossmoor, CA 90720.

FOR FURTHER INFORMATION CONTACT: Smita Deshpande, Branch Chief, Caltrans-District 12, ''Attn: 405 Scoping,'' 2201 Dupont Drive, Suite 200, Irvine, CA 92612; Tel: 949.724.2000. *405scoping.parsons@parsons.com*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans, as the delegated National Environmental Policy Act (NEPA) agency, in cooperation with the Orange County Transportation Authority (OCTA), will prepare an environmental impact statement (EIS) on a proposal for a highway improvement project in Orange County, California. The proposed project covers approximately 14 miles and is located between State Route (SR) 73 and Interstate 605 (I–605) on Interstate 405 (I–405). The purpose of the project, as currently defined, is to increase capacity, improve traffic and interchange operations, and enhance safety on I–405 between SR–73 and I–605. Currently, the following alternatives are being considered:

- Baseline/No Build Alternative; taking no action.

• Build Alternative 1; adding one general purpose lane in each direction.

• Build Alternative 2; adding two general purpose lanes in each direction.

• Build Alternative 3; adding one toll lane to the existing carpool lane in each direction that will be managed together (Federal Highway Administration tolling authority required); also adding one general purpose lane in each direction north of Euclid Street to I–605.

• Build Alternative 4; on I–405 from Euclid Street to I–605, providing additional general purpose lane at various locations and improving various interchanges.

• Transportation Systems Management (TSM)/Transportation Demand Management (TDM)/Mass Transit Alternative; making only low-cost operational improvements, rather than major capital projects, to maximize the efficiency of the present highway system and expand travelers' transportation choices.

Based on a Preliminary Environmental Analysis Report (PEAR) for the I–405 Improvement Project, it is anticipated that the project may require the following Federal permits: Section 404 Permit for filling/dredging waters of the United States and Section 401 Water Quality Certification. The environmental document will analyze factors that include, but are not limited to, the following: Aesthetics, cultural resources, biological resources, hazardous wastes and materials, public services and facilities, water quality, floodplain, noise, air quality, recreation, community impacts, and transportation/traffic. Some of these alternatives may have impacts on the above mentioned resources, as well as on water quality, cultural resources, parks/recreation facilities, and community character and cohesion; the environmental documentation process will assess for potential impacts and suggest ways to reduce or mitigate them.

This document is available at *http://www.octa.net/405improvement* and *http://www.dot.ca.gov/dist12/405/index.htm*.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, various Tribal governments, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. The environmental review process will begin in Fall 2009. Public scoping meetings will be held in Fountain Valley, Huntington Beach, Westminster, and Rossmoor, California, on September 22, 23, 30, and October 01, respectively. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Ms. Deshpande at Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 26, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–21040 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent to Prepare an Environmental Impact Statement for Proposed Transit Improvements to the Red Line, Cook County, IL

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FTA, as the lead federal agency, and the Chicago Transit Authority (CTA) intend to prepare an Environmental Impact Statement (EIS) for the Red Line Extension Project in Cook County, Illinois. CTA operates the rapid transit system in Chicago, Cook County, Illinois. The proposed project, described more completely within, would extend the Red Line, a heavy rail transit line, to connect the 95th Street Station to 130th Street. The purpose of this Notice of Intent is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the EIS process.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to CTA on or before October 27, 2009. See **ADDRESSES** below for the address to which written public comments may be sent. Two public scoping meetings to accept comments on the scope of the EIS will be held on the following dates:

• Tuesday, September 22, 2009; 6 p.m. to 8 p.m.; at the Historic Pullman Visitor Center, 11141 S. Cottage Grove Avenue, Chicago, IL 60628.

• Thursday, September 24, 2009; 6 p.m. to 8 p.m.; at the Woodson Regional Chicago Public Library, 9525 S. Halsted Street, Chicago, IL 60628.

The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the scoping meeting should contact Mr. Darud Akbar, Government and Community Relations Officer, at 312–681–2708 or *dakbar@transitchicago.com,* five days prior to the meeting.

Scoping materials describing the project purpose and need and the alternatives proposed for analysis will be available at the meetings and on the CTA Web site *http://www.transitchicago.com/RedEIS.* Paper copies of the scoping materials may also be obtained from Mr. Darud Akbar, Government and Community Relations Officer, at 312–681–2708 or *dakbar@transitchicago.com.* An interagency scoping meeting will be held on Thursday, September 24 at 10:30 a.m. at CTA Headquarters, in Conference Room 2C, 567 W. Lake Street, Chicago, IL 60661. Representatives of Native American tribal governments and of all federal, state, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Mr. Jeffrey Busby, General Manager, Strategic Planning, Chicago Transit Authority, P. O. Box 7602, Chicago, IL 60680–7602, or via e-mail at *RedExtension@transitchicago.com.*

FOR FURTHER INFORMATION CONTACT: Mr. David Werner, Community Planner, Federal Transit Administration, Region V, 200 West Adams Street, Suite 320, Chicago, IL 60606, phone 312–353–3879, e-mail *david.werner@dot.gov.*

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and CTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on

the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should address (1) alternatives that may better achieve the project's need and purposes at less cost or with fewer adverse impacts, and (2) any significant environmental impacts relating to the alternatives.

National Environmental Policy Act (NEPA) ''scoping'' (40 CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including (1) Documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

Purpose and Need for the Project

The purpose of the Red Line Extension project is to reduce travel times to jobs for far South Side and South Suburban residents and improve the performance of the existing Red Line 95th Street Station terminal. The project would also provide an opportunity to support economic development initiatives.

The need for the project is based on the following considerations: lack of park-and-ride, passenger drop-off, and poor pedestrian facilities limit access to the existing 95th Street terminal of the Red Line; customers accessing the existing terminal facility by bus experience measureable delays resulting from poor performance of surrounding arterial intersections, insufficient space for bus loading and unloading, and insufficient space for bus layovers; congested bus and passenger conditions at the existing terminal station and bus facility result in safety issues and diminish the attractiveness of transit as an alternative to other travel modes; roadway performance in the project area is adversely impacted by narrow arterial streets and frequent at-grade freight rail crossings; and, the project area population is highly transit-dependent, minority and low-income.

Project Location and Environmental Setting

The proposed heavy rail transit (HRT) project area lies about 11 miles south of the Chicago Central Area (commonly referred to as the ''Loop''). The limits of the project area are from 95th Street on the north to 130th Street on the south. The Calumet-Sag Channel/Little Calumet River extends along the southern edge of the project area and Lake Calumet is located to the east.

The project area includes parts of eight community areas in the far South of the City of Chicago. Community areas include Washington Heights, Morgan Park, Roseland, Pullman, West Pullman, South Deering, Hegewisch and Riverdale. The project area encompasses significant residential (primarily single family), industrial (existing and vacant), transportation, and commercial developments.

The locally preferred alternative (LPA) for the proposed Red Line Extension project was approved by the Chicago Transit Board for further study in the EIS on August 12, 2009. The LPA would extend the heavy rail transit line from the 95th Street Station south along the I–57 Expressway to the Union Pacific Railroad (UPRR) right-of-way near Eggleston Avenue. From that point, the line extends south from I–57 along the UPRR corridor to approximately 111th Street where it turns southeast along existing railroad and industrial right-of-way to terminate in the vicinity of 130th Street. The extension would add 5.3 new route miles of rapid transit to the existing Red Line, four additional stations at approximately 103rd, 111th, 115th, and 130th Streets with new park-and-ride and bus terminal facilities at each station.

Alternatives

The Red Line Extension Final Alternatives Analysis Report (2009) prepared by CTA identified three alternatives for further consideration in the EIS. These alternatives include: A No Build Alternative, Transportation System Management (TSM) Alternative, and the UPRR HRT Alternative (the LPA). Additionally, the Halsted Street HRT Alternative from the Red Line Extension Alternatives Analysis Screen 3 Report (2009) will be considered in the EIS.

No Build Alternative: The No Build Alternative is defined as the existing transportation system, plus any committed transportation improvements. Committed transportation improvements include projects that are already in the Chicago Metropolitan Agency for Planning (CMAP) financially constrained Transportation Improvement Program (TIP). The Red Line project area has five bridge reconstructions, and several road improvement projects included in the FY 2007–2012 TIP. These improvements are primarily on highway segments in the vicinity of the project area and generally do not lie adjacent to or intersect with the proposed TSM or HRT alternatives.

Bridge projects in the TIP include: Illinois 1 (Halsted Street) at the Little Calumet River; I–94 (Bishop Ford Expressway) at the Stony Island ramp and at Cottage Grove Road; I–57 at 103rd Street; and I–57 at Genoa Road. Road improvement projects include a variety of landscaping, safety fencing, and resurfacing projects, and coordination of signal timing on Stony Island Avenue from 95th Street north, and on 95th Street from Western Avenue east to Ewing Avenue. There is also a bicycle and pedestrian multi-use trail proposed to extend from the existing Centennial Trail in Lemont to the Burnham Greenway in Burnham.

Bus transit service under the No Build Alternative would be focused on the preservation of existing services and projects. No significant changes to bus service are anticipated in the project area. All elements of the No Build Alternative are included in each of the other alternatives.

Transportation System Management (TSM) Alternative: A TSM Alternative is proposed because it is required as part of the New Starts evaluative process; in this case, it does not meet the purposes of and need for the proposed project. The TSM Alternative is Bus Rapid Transit (BRT) that would operate between the 95th Street Station and 130th Street via East 95th Street, Michigan Avenue, East 127th Street, South Indiana Avenue, and East 130th Street. Proposed BRT service would operate in mixed traffic with traffic signal priority along 95th Street, Michigan Avenue, and 130th Street.

The TSM Alternative is 5.5 miles long and would include four intermediate

stops at 103rd, 111th, 115th, and 130th Streets with park-and-ride facilities proposed at all of the new stops. The 95th Street terminal would be expanded to extend the existing bus bays along State and Lafayette Streets approximately 250-feet north to 94th Street to improve circulation and safety. The TSM alternative assumes that buses from the south would continue to serve the 95th Street Station.

UPRR Heavy Rail Transit (HRT) Alternative/Locally Preferred Alternative (LPA): The proposed LPA would operate between the existing Red Line 95th Street Station and 130th Street. The line would be on an elevated structure from the 95th Street as it heads south along the I–57 Expressway for nearly one-half mile until reaching the UPRR corridor in the vicinity of Eggleston Avenue. It would then turn south along the UPRR corridor to approximately 111th Street where it would turn southeast. East of South Prairie Avenue the alignment would cross over the Canadian National/Metra tracks near 119th Street where it would transition to an at-grade profile and then continue southeast along the former Michigan Central/Indiana Harbor Belt (IHB) railroad right-of-way to terminate in the vicinity of 130th Street.

The LPA is 5.3 miles long and would include three new intermediate stations at 103rd, 111th, and 115th Streets and a new terminal station at 130th Street with new park-and-ride and bus terminal facilities at each station. This alternative assumes that buses from the south would be re-routed to serve the new intermediate and terminal stations to speed passenger travel to downtown Chicago.

The new HRT tracks would be placed immediately adjacent to the UPRR right-of-way on either the west side (West Side Option) or the east side (East Side Option). Both options would require adjacent property acquisition to accommodate the CTA right-of-way and station facilities at 103rd, 111th, and 115th Streets. Based on a preliminary analysis of the conceptual alignment plans and Cook County parcel data, the West Side Option would require up to 112 property acquisitions and/or displacements and the East Side Option would require 138. In addition, the West Side Option could impact Fernwood Parkway between 99th Street and 103rd Streets which could trigger a Section 4(f) of the Department of Transportation Act evaluation in the EIS. The East Side Option could impact Wendell Smith Park adjacent to the I–57 Expressway which could also trigger a Section 4(f) evaluation in the EIS. Kensington Playground Park near 118th Street would not be impacted by either option.

There are two options for the 130th Street terminal station. The Red Line extension would continue south along the IHB right-of-way to either a south or west terminal station location along the north side of 130th Street, just west of the I–94 Bishop Ford Freeway.

Halsted Street HRT Alternative: The proposed Halsted Street HRT Alternative would be operated on an elevated structure between the existing Red Line 95th Street Station and the Halsted Street/Vermont Avenue intersection in the vicinity of 127th Street. The alignment would follow the median of I–57 Expressway until reaching Halsted Street. It would then turn south onto Halsted Street and continue in the median to Vermont Avenue.

The Halsted Street HRT Alternative is 5.0 miles long and would include three new intermediate stations at 103rd, 111th, 119th Streets and a new terminal station at Vermont Avenue with new park-and-ride and bus terminal facilities at the intermediate and terminal stations. This alternative assumes that buses from the south would be re-routed to serve the new intermediate and terminal stations to speed passenger travel to downtown Chicago.

Near the proposed station areas, there may be additional impacts to adjacent land owners if land acquisition would be required for station facilities such as bus turnarounds or parking facilities. This would be most applicable at the proposed terminal station at 127th/Vermont since several properties are located close to Halsted Street in this segment and there may be higher off-street facility needs.

Possible Effects

The purpose of this EIS process is to study, in a public setting, the effects of the proposed project and its alternatives on the quality of the human environment. Areas of investigation for transit projects generally include, but are not limited to: Land use, development potential, land acquisition and displacements, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species; investigation may reveal that the proposed project will not affect or affect substantially many of those areas. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and CTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and CTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on CTA's Web site *http://www.transitchicago.com/RedEIS*. The public involvement program includes a full range of activities including maintaining the project Web page on the CTA Web site and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the project's public participation plan.

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is

received (preferably in advance of printing), FTA and its grantees will distribute only the executive summary of the environmental document together with a Compact Disc of the complete environmental document. A complete printed set of the environmental document is available for review at the grantee's offices and elsewhere; an electronic copy of the complete environmental document is also available on the grantee's Web page.

CTA may seek New Starts funding for the proposed project under 49 United States Code 5309 and will, therefore, be subject to New Starts regulations (49 Code of Federal Regulations (CFR) Part 611). The New Starts regulations also require the submission of certain project-justification information to support a request to initiate preliminary engineering. This information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR Part 771).

Issued on: August 24, 2009.

Marisol R. Simon,

Regional Administrator, FTA Region V.

[FR Doc. E9–20963 Filed 8–28–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Fiscal Year 2010 Safety Grants

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

ACTION: Notice; correction.

SUMMARY: FMCSA is correcting a notice that appeared in the **Federal Register** on August 12, 2009 (74 FR 40638), which informed the public of FMCSA's Fiscal Year (FY) 2010 safety grant opportunities and FMCSA's changes to its application and award processes for grant programs.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact, Ms. Theresa Rowlett at 202.366.6406. Staff may be reached at FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: For FMCSA's FY 2010 Grants notice published on August 12, 2009 (74 FR 40638), the following corrections are made:

On page 40638, in the **FOR FURTHER INFORMATION CONTACT** section, the contact for the Commercial Vehicle Information Systems and Networks Grants (CVISN) is corrected from ''CVISN Grants—Julie Lane, *julie.lane@dot.gov,* 202–385–2391'' to ''CVISN Grants—Quon Kwon, *quon.kwan@dot.gov,* 202–385–2389''.

On page 40638, in the *FY 2010 Safety Grants Program* section, the schedule for the New Entrant Safety Audit Grants and the Motor Carrier Safety Assistance Program (MCSAP) High Priority Grants is corrected from ''New Entrant Safety Audit Grants—September 1, 2009, MCSAP High Priority Grants—October 15, 2009'' to ''New Entrant Safety Audit Grants—October 15, 2009, MCSAP High Priority Grants—September 15, 2009.''

Issued on August 24, 2009.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. E9–21019 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

4th Meeting: RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 221 meeting: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures.

DATES: The meeting will be held September 15–16, 2009. September 15th from 12 a.m. to 5 p.m., September 16th from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., MacIntosh—NBAA and Hilton—ATA Rooms, 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 221: Aircraft Secondary Barriers and Alternative Flight Deck Security Procedures meeting. The agenda will include:

- Welcome/Introductions/Administrative Remarks;
- Approval of Summary of the Second Meeting held June 23–24, 2009, RTCA Paper No. 174–09/SC221–013;
- Leadership Comments;
- Review of Threat Work Group—Status Report;
- Review of Alternative Methods Work Group—Status Report;
- Review of Installed Physical Secondary Barrier (IPSB) Work Group—Status Report;
- Presentation/Discussion of SC–221 Schedule and Milestones;
- Discussion of Working Group reports: re-allocation of groups, capture learning points, discuss additional or follow-on goals;
- Approval and Tasking of Existing/Proposed Working Groups;
- Other Business—Including Proposed Agenda, Date and Place for Next 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 24, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–21063 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eightieth Meeting: RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held September 29–October 2, 2009, from 9

a.m. to 4:30 p.m. (unless stated otherwise).

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 159 meeting. The agenda will include:

Specific Working Group Sessions

September 29

• All Day, Working Group 2C, GPS/Inertial, Colson Board Room.

September 30

• All Day, Working Group 2, GPS/WAAS, Colson Board Room. Afternoon (1 p.m.–5 p.m.), Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh–NBAA Room & Hilton—ATA Room.

October 1

• All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh—NBAA Room & Hilton—ATA Room.

Agenda—Plenary Session—Agenda

October 2—Starting at 9 a.m.

MacIntosh—NBAA & Hilton—ATA Rooms

• Chairman's Introductory Remarks.
• Approval of Summary of the Seventy-Ninth Meeting held June 24, 2009, RTCA Paper No. 184–09/SC159–980.
• Review Working Group (WG) Progress and Identify Issues for Resolution.
• GPS/3rd Civil Frequency (WG–1).
• GPS/WAAS (WG–2).
• GPS/GLONASS (WG–2A).
• GPS/Inertial (WG–2C).
• GPS/Precision Landing Guidance and (WG–4).
• GPS/Airport Surface Surveillance (WG–5).
• GPS/Interference (WG–6).
• GPS/Antennas (WG–7).
• GPS/GRAS (WG–8).
• Review of EUROCAE Activities.
• Assignment/Review of Future Work.
• Other Business.
• Closing Plenary Session (Date and Place of Next 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 24, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–21065 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. 1998–4334; FMCSA–2000–7918; FMCSA–2001–9561; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–25246; FMCSA–2007–26653]

Qualification of Drivers; Exemption Renewals; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 28 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on August 14, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 28 renewal applications, FMCSA renews the Federal vision exemptions for Glenn A. Babcock, Jr., JeanPierre Brefort, Joey E. Buice, James T. Butler, Jr., Paul W. Dawson, Lois E. De Souza, James M. Eads, Jay E. Finney, Steven A. Garrity, Waylon E. Hall, Gary D. Hallman, John R. Hughes, Edward J. Kasper, Jeffrey M. Kimsey, Richard L. Leonard, Donald R. McCracken, William F. Nickel, IV., Gerald L. Phelps, Jr., Thomas G. Raymond, Robert A. Reyna, Tim M. Seavy, Boyd D. Stamey, Randy D. Stanley, Harry J. Stoever, Lee T. Taylor, James M. Tayman, Sr., Scott C. Teich and John E. Terrell.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: August 20, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–21018 Filed 8–31–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 25, 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 October 1, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1974.

Type of Review: Revision.

Title: Profit and Loss from Business.

Description: Schedule C (Form 1040) is used by individuals to report their business income, loss and expenses. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 71,701,692 hours.

OMB Number: 1545–1683.

Type of Review: Extension.

Title: Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.

Description: The data collected on the forms provides trustees of Illinois Land Trusts a convenient method of reporting information related to creating, changing, and closing such trusts.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 22,000 hours.

OMB Number: 1545–0162.

Type of Review: Revision.

Title: Credit for Federal Tax Paid on Fuels.

Description: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. This form is used to figure the amount of the income tax credit. The data is used to verify the validity of the claim for the type of nontaxable or exempt use.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 4,122,067 hours.

OMB Number: 1545–0996.

Type of Review: Extension.

Title: REG–130477–00; REG–130481–00 (Final), Required Distributions from Retirement Plans.

Description: The regulations relate to the required minimum distribution from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 8,400 hours.

OMB Number: 1545–1260.

Type of Review: Extension.

Title: CO–62–89 (Final) Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryfowards.

Description: The reporting requirement concerns the election a taxpayer may make to treat as the change data the effective data of a plan of reorganization in a title II or similar case rather than the confirmation date of a plan.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1832.

Type of Review: Extension.

Title: Systemic Advocacy Issue Submission Form.

Description: Form 14411 is to be used by individuals, businesses, practitioners and other public groups to identify systemic problems that taxpayers are encountering with IRS. This form will be submitted electronically via the IRS.gov website. Mailed or faxed forms will be accepted and are necessary.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 336 hours.

OMB Number: 1545–0166.

Type of Review: Extension.

Title: Recapture of Investment Credit.

Description: IRC section 50(a) and Regulation section 1.47 require that taxpayers attach a statement to their return showing the computation of the recapture tax when investment credit property is disposed of before the end of the recapture period used in the original computation of the investment credit.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 129,492 hours.

OMB Number: 1545–1983.

Type of Review: Extension.

Title: Qualified Railroad Track Maintenance Credit.

Description: Form 8900, Qualified Railroad Track Maintenance Credit, was developed to carry out the provisions of new Code section 45G. This new section was added by section 245 of the American Jobs Creation Act of 2004 (Pub. L. 108–357). The new form provides a means for the eligible taxpayers to compute the amount of credit.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,985 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–21031 Filed 8–31–09; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Guaranty Bank; Austin, TX; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision (OTS) has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Guaranty Bank, Austin, Texas (OTS No. 08534), on August 21, 2009.

Dated: August 25, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–20880 Filed 8–31–09; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Tuesday,
September 1, 2009

Part II

Department of Labor

Employee Benefits Security Administration

Grant of Individual Exemptions and Prohibited Transaction Exemptions Involving: PNC Financial Services Group, Inc. (PNC Financial), PTE 2009–22; Verizon Investment Management Corporation, PTE 2009–23; United States Steel and Carnegie Pension Fund (the Applicant), PTE 2009–24; and Barclays Global Investors, N.A. and Its Affiliates and Successors (BGI) and Barclays Capital Inc. and Its Affiliates and Successors (BarCap) (Collectively the Applicants), PTE 2009–25; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Grant of Individual Exemptions and Prohibited Transaction Exemptions Involving: PNC Financial Services Group, Inc. (PNC Financial), PTE 2009–22; Verizon Investment Management Corporation, PTE 2009–23; United States Steel and Carnegie Pension Fund (the Applicant), PTE 2009–24; and Barclays Global Investors, N.A. and Its Affiliates and Successors (BGI) and Barclays Capital Inc. and Its Affiliates and Successors (BarCap) (Collectively the Applicants), PTE 2009–25

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

PNC Financial Services Group, Inc. (PNC Financial), Located in Pittsburgh, Pennsylvania.

[Prohibited Transaction Exemption 2009–22 Application No. D–11397.]

Exemption

Section I—Exemption for Receipt of Fees

In connection with the investment in an open-end investment company (a Fund or Funds), as defined, below, in Section IV(e), by certain employee benefit plans (Client Plan or Client Plans) for which PNC, as defined, below, in Section IV(a), serves as a fiduciary and is a party in interest with respect to such Client Plan(s), the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (F) [1] of the Code, shall not apply, effective September 29, 2006, to:

(a) The receipt of fees by PNC from a Fund where BlackRock, as defined, below, in Section IV(b), acts as the investment adviser for such Fund, and the receipt of fees by BlackRock for the provision of investment advisory services, or similar services, to such Fund;

(b) The receipt of fees by PNC from a Fund for providing certain service(s) (Secondary Service(s)), as defined, below, in Section IV(i), to such Fund; and

(c) The receipt of fees by PNC from BlackRock in connection with administrative service(s) (Mutual Fund Administration Service(s)), as defined, below, in Section IV(l), provided to a Fund in which a Client Plan invests; provided that the conditions, as set forth in Section II and Section III, below, were satisfied, as of the effective date of this exemption and thereafter.

[1] For purposes of this exemption references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Section II—Specific Conditions

(a) PNC, serving as a fiduciary for a Client Plan, satisfies any one (but not all) of the following:

(1) A Client Plan invested in a Fund does not pay any plan-level investment management fee, investment advisory fee, or similar fee (Plan-Level Fee(s)) to PNC with respect to any of the assets of such Client Plan which are invested in shares of such Fund for the entire period of such investment (the Offset Fee Method). This condition does not preclude the payment of investment advisory fees or similar fees (Fund-Level Fee(s)) by a Fund to BlackRock under the terms of an investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940 (the Investment Company Act);

(2) A Client Plan invested in a Fund pays an investment management fee or similar fee based on total assets of such Client Plan from which a credit has been subtracted representing such Client Plan's *pro rata* share of investment advisory fees or similar fees paid by such Fund to BlackRock (the Subtraction Fee Method). If, during any fee period for which a Client Plan has prepaid its investment management or similar fee, such Client Plan purchases shares of such Fund, the requirement of this Section II(a)(2) shall be deemed met with respect to such prepaid fee if, by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the assets of such Client Plan invested in shares of such Fund: (i) Is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (ii) is returned to such Client Plan no later than during the immediately following fee period, or (iii) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this Section II(a)(2), a fee shall be deemed to be prepaid for any fee period, if the amount of such fee is calculated as of a date not later than the first day of such period; or

(3) A Client Plan invested in a Fund receives a ''a credit'' [2] (the Credit Fee Method) of such Client Plan's proportionate share of all fees charged to such Fund by BlackRock for

[2] PNC Financial represents that it would be accurate to describe ''the credit'' as a ''credited dollar amount'' to cover situations in which the credited amount is used to acquire additional shares of a Fund, rather than being held by a Client Plan in the form of cash. It is represented that the standard practice is to reinvest the ''credited dollar amount'' in additional shares of the same Fund with respect to which the fees were credited.

investment advisory services or similar services for a particular month: (1) Effective for the period, September 29, 2006, through December 31, 2008, on the *earlier* of either: (a) The same day as PNC receives a fee from BlackRock for Mutual Fund Administration Services provided for that month to such Fund by PNC, or (b) the fifth business day before the end of the month following the month in which fees for investment advisory services, or similar services, accrued, or (2) effective for the period beginning, January 1, 2009, and continuing thereafter, on a date which is no later than one business day after BlackRock receives fees from the Fund for investment advisory services, or similar services, provided for that month to such Fund by BlackRock. The crediting of all such fees to such Client Plan by PNC is audited by an independent accounting firm (the Auditor) on at least an annual basis to verify the proper crediting of such fees to such Client Plan.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share, as defined, below, in Section IV(f), at the time of the transaction, and is the same price which would have been paid or received for such shares by any other investor in such Fund at that time;

(c) PNC, including any officer or director of PNC, does not purchase shares of a Fund from any Client Plan or sell shares of a Fund to any Client Plan;

(d) A Client Plan does not pay sales commissions in connection with any purchase or sale of shares of a Fund, and a Client Plan does not pay redemption fees in connection with any sale of shares to a Fund, unless

(1) Such redemption fee is paid only to a Fund, and

(2) The existence of such redemption fee is disclosed in the prospectus for such Fund in effect both at the time of any purchase of such shares and at the time of such sale;

(e) The combined total of all fees received by PNC for services provided by PNC:

(1) To Client Plans, and

(2) To Funds in which Client Plans invest is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act;

(f) PNC does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act in connection with the subject transactions;

(g) A Client Plan is not an employee benefit plan sponsored or maintained by PNC;

(h) A second fiduciary (Second Fiduciary), as defined, below, in Section IV(h), who is acting on behalf of a Client Plan receives, in advance of any initial investment by a Client Plan in a Fund, full and detailed written disclosure of information concerning such Fund, including but not limited to:

(1) A current prospectus for each Fund in which such Client Plan is considering investing;

(2) A statement describing the fees, including the nature and extent of any differential between the rates of such fees for:

(i) Any investment advisory or similar services to be paid by such Fund to BlackRock,

(ii) Any Secondary Services to be paid by such Fund to PNC,

(iii) Any Mutual Fund Administration Services to be paid by BlackRock to PNC, and

(iv) All other fees to be charged to or paid by a Client Plan and by such Fund;

(3) The reasons why PNC, acting as fiduciary for such Client Plan, may consider investment in such Fund to be appropriate for such Client Plan;

(4) A statement describing whether there are any limitations applicable to PNC with respect to which assets of a Client Plan that may be invested in such Fund, and if so, the nature of such limitations; and

(5) Upon the request of the Second Fiduciary, acting on behalf of a Client Plan, a copy of the proposed exemption and a copy of the final exemption, once such documents are published in the **Federal Register.**

(i) On the basis of the information described, above, in Section II(h), a Second Fiduciary, acting on behalf of a Client Plan, authorizes in writing: (1) The investment of the assets of such Client Plan in shares of each particular Fund; and (2) the fees received by PNC and by BlackRock in connection with services provided by PNC and by BlackRock to such Fund. Such authorization by a Second Fiduciary must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(j)(1) All authorizations, described, above, in Section II(i), made by a Second Fiduciary, regarding: (i) Investments by a Client Plan in a Fund, (ii) fees paid for investment advisory services or similar services provided by BlackRock to such Fund, (iii) fees paid for Secondary Services provided by PNC to such Fund, and (iv) fees paid by BlackRock to PNC for Mutual Fund Administration Services provided by PNC to such Fund, shall be terminable at will by the Second Fiduciary, acting on behalf of such Client Plan, without penalty to such Client Plan, upon receipt by PNC of a written notice of termination. A form (the Termination Form), as defined, below, in Section IV(j), expressly providing an election to terminate the authorizations, described, above, in Section II(i), with instructions on the use of such Termination Form must be provided to such Second Fiduciary at least annually. However, if a Termination Form has been provided to such Second Fiduciary, pursuant to Section II(k) and (l), below, then a Termination Form need not be provided again, pursuant to this Section II(j), unless at least six (6) months but no more than twelve (12) months have elapsed, since a Termination Form was provided, pursuant to Section II(k) and (l), below.

(2) The instructions for the Termination Form must include the following statements:

(i) The authorization, described, above, in Section II(i), is terminable at will by the Second Fiduciary, acting on behalf of a Client Plan, without penalty to such Client Plan, upon receipt by PNC of written notice from such Second Fiduciary.

(ii) Failure by such Second Fiduciary to return the Termination Form on behalf of such Client Plan will be deemed to be an approval by the Second Fiduciary and will result in the continuation of the authorization, as described, above, in Section II(i), of PNC to engage in the transactions which are the subject of this exemption.

(k) For a Client Plan invested in a Fund which uses one of the fee methods described, above, in Section II(a)(1), (a)(2), or (a)(3), in the event of a proposed change from one of the fee methods to another or in the event of a proposed increase in the rate of any fee paid by a Fund to BlackRock for any investment advisory service, or similar service that BlackRock provides to such Fund over an existing rate for such services or method of determining the fee for such services, which had been authorized, in accordance with Section II(i), above, by the Second Fiduciary for such Client Plan, at least thirty (30) days in advance of the implementation of such change from one of the fee methods to another or such increase in a fee, PNC will provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of such change from one of the fee methods to another or increase in fee) to the Second Fiduciary of each Client Plan affected by such change from one of the fee

methods to another or increased fee. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above, in Section II(j).[3]

(l) In the event of:

(i) A proposed addition of a Secondary Service for which an additional fee is charged; or

(ii) A proposed addition of a Mutual Fund Administration Service provided by PNC to a Fund in which a Client Plan invests and for which an additional fee is charged; or

(iii) A proposed increase in the rate of any fee paid by a Fund to PNC for any Secondary Service, or

(iv) A proposed increase in the rate of any fee paid by BlackRock to PNC for Mutual Fund Administration Services provided to such Fund, or

(v) A proposed increase in the rate of any fee paid for Secondary Services or for Mutual Fund Administration Services that results from the decrease in the number or kind of services performed by PNC for such fee over an existing rate for services which had been authorized, in accordance with Section II(i), by the Second Fiduciary for a Client Plan invested in such Fund, PNC, at least thirty (30) days in advance of the implementation of such fee increase or additional service for which an additional fee is charged, will provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of such Fund and which explains the nature and amount of the additional service for which an additional fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each Client Plan invested in such Fund which is proposing to increase fees or add services for which an additional fee is charged. Such notice shall be accompanied by a Termination Form, with instructions on the use of such Termination Form, as described, above in Section II(j).

(m) On an annual basis, PNC, serving as fiduciary to a Client Plan, provides the Second Fiduciary of such Client Plan invested in a Fund with:

(1) A copy of the current prospectus for such Fund in which such Client Plan invests;

(2) Upon the request of such Second Fiduciary, a copy of the Statement of Additional Information for such Fund which contains a description of all fees paid by such Fund to PNC and all fees paid by BlackRock to PNC for Mutual Fund Administration Services;

(3) A copy of the annual financial disclosure report which includes information about Fund portfolios, within sixty (60) days of the preparation of such report;

(4) Oral or written responses to inquiries of the Second Fiduciary of such Client Plan, as such inquiries arise; and

(5) A copy of the audit findings prepared by the independent Auditor, as required by Section II(a)(3), is provided by PNC at least annually within sixty (60) days of the completion of the report of such audit findings, to the Second Fiduciary of those Client Plans using the Credit Fee Method, as described in Section II(a)(3).

(n) All dealings between a Client Plan and a Fund are on a basis no less favorable to such Client Plan than dealings between such Fund and other shareholders invested in such Fund.

Section III—General Conditions

(a) PNC maintains for a period of six (6) years the records necessary to enable the persons described, below, in Section III(b) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if solely because of circumstances beyond the control of PNC, the records are lost or destroyed prior to the end of the six-year period, and

(2) No party in interest other than PNC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by Section III(b), below.

(b)(1) Except as provided in Section III(b)(2) and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to in Section III(a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department of Labor (the Department) or the Internal Revenue Service,

(ii) Any fiduciary of a Client Plan who has authority to acquire or dispose of shares of a Fund owned by such Client Plan, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Client Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in Section III(b)(1)(ii) and (iii) shall be authorized to examine trade secrets of PNC, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this exemption:

(a) The term, ''PNC,'' means PNC Financial, and any affiliate thereof, as defined, below in Section IV(c).

(b) The term, ''BlackRock,'' means BlackRock, Inc., and any affiliate thereof, as defined, below in Section IV(c).

(c) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term, ''Fund(s),'' shall mean any diversified open-end investment company or companies registered with the Securities and Exchange Commission under the Investment Company Act, as amended, for which BlackRock serves as an investment adviser (but not sub-adviser).

(f) The term, ''net asset value,'' means the amount for purposes of pricing all purchases and sales of shares of a Fund calculated by dividing the value of all securities, determined by a method as set forth in the prospectus for such Fund and in the statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(g) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act (or a member of the family as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(h) The term, ''Second Fiduciary,'' means a fiduciary of a Client Plan who is independent of and unrelated to PNC

[3] It is represented that PNC furnished only disclosure, not advanced notice, of a mid-2007 advisory fee change to the Second Fiduciaries of Client Plans invested in Funds using the Credit Fee Method. The change, which resulted in increased fees to BlackRock of 0.5 basis points, (which it is represented was credited back to the Client Plans) occurred effective June 1, 2007, with the disclosure being provided in October 2007, after the effective date of such change. As the Second Fiduciaries of the Client Plans did not receive notification of such increase at least thirty (30) days in advance of the implementation of such increase, the Department, herein, is not providing relief for the receipt of such fee increase by BlackRock.

and BlackRock. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to PNC and BlackRock if:

(1) Such fiduciary, directly or indirectly controls, through one or more intermediaries, is controlled by, or is under common control with PNC or with BlackRock;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary, is an officer, director, partner, or employee of PNC or of BlackRock (or is a relative of such persons); or

(3) Such fiduciary, directly or indirectly, receives any compensation or other consideration for his or her personal account in connection with any transaction described in this exemption.

If an officer, director, partner, or employee of PNC or of BlackRock (or relative of such persons) is a director of such Second Fiduciary, and if he or she abstains from participation in:

(i) The choice of such Client Plan's investment adviser,

(ii) The approval of any such purchase or sale between such Client Plan and a Fund, and

(iii) The approval of any change in fees or fee method, as described, above, in Section II (k) or (l), charged to or paid by such Client Plan in connection with any of the transactions described in Section I above, then Section IV(h)(2), above, shall not apply.

(i) The term, ''Secondary Service(s),'' means a service or services which is/are provided by PNC to a Fund, including but not limited to custodial, accounting, or administrative services. The fees for providing Secondary Services to a Fund are paid to PNC by such Fund.

(j) The term, ''Termination Form,'' means the form supplied to a Second Fiduciary which expressly provides an election to such Second Fiduciary to terminate on behalf of a Client Plan the authorization described, above, in Section II(i).

(k) The term, ''business day,'' means any day that

(i) PNC Financial is open for conducting all or substantially all of its banking functions, and

(ii) the New York Stock Exchange (or any successor exchange) is open for trading.

(l) The term, ''Mutual Fund Administration Services,'' means a service or services which is/are provided by PNC to, or on behalf of, a Fund, including PNC's maintaining records of investments by Client Plans in such Fund, processing Fund transactions for Client Plans, transmitting account statements and shareholder communications, responding to inquiries from Client Plans regarding account balances and dividends, and providing information to such Fund on sales and assisting in monitoring possible market timing. The fees for providing Mutual Fund Administration Services to a Fund are paid to PNC by BlackRock, rather than by such Fund.

DATES: *Effective Date:* This exemption is effective as of September 29, 2006.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on March 26, 2009. The deadline for providing notice to all interested persons was April 10, 2009. All comments and requests for a hearing from interested persons were due by May 11, 2009. The Department received no requests for a hearing. However, three (3) commentators informed the Department that the mailing to them was not complete.

In this regard, the first commentator did not receive a copy of the Notice. In response, the applicant indicated that the Notice had been inadvertently omitted from the initial mailing, dated April 3, 2009, to one group of interested persons, and that the mailing was resent to that group, including the Notice, before the deadline on April 10, 2009, for providing notice to interest persons. The second commentator indicated that certain enclosures were not included. In response, the applicant indicated that this commentator was part of the group that had received the mailing without the Notice, and that he should have subsequently received the second mailing, before the deadline on April 10, 2009, for providing notice to interest persons.

The third commentator indicated that he had received only the Notice and no cover letters. The applicant was unable to explain how this error could have occurred, because this part of the mailing was assembled by a machine designed to confirm that the inserts in each envelope were of the correct thickness. Accordingly, the applicant confirmed through a sampling of other packages that were part of this group that there were no other apparent instances of this error. In any event, the applicant mailed a complete package to the third commentator.

During the comment period, the Department received 24 telephone inquiries from commentators seeking an explanation of the contents of the Notice. In response, the staff of the Office of Exemption Determinations spoke to each commentator and provided an explanation ''in plain English'' of the proposed exemption.

In addition, eight (8) commentators wrote to the Department requesting a further explanation of the proposed exemption. In response to these commentators, the applicant states that the notice to interested persons provided by PNC contained all the information required by the Department's exemption procedures, and also included an additional cover page that was intended to help the recipients understand the contents of the Notice. The applicant maintains that no further written explanation on PNC's part was either required or permitted. Further, the applicant maintains that in any event, these comments do not raise any substantive issues on the proposed exemption itself.

The Department concurs.

During the comment period, the Department also received via e-mail, facsimile, and mail comments from three (3) commentators who raised substantive issues. Copies of these letters were posted on the Web site regulations.gov. At the close of the comment period, the Department forwarded a copy of these comments to the applicant for response. The comments and the applicant's response thereto are summarized in the numbered paragraphs below.

1. One commentator, identified as an IRA trustee, in an e-mail, dated April 20, 2009, took the view that the requested exemption ''appears to be an effort to modify the existing ERISA law to allow a corporate 'sweetheart deal' of two interlocked corporations (PNC and BLACKROCK),'' and says that a change to the existing law ''would be a step backward.'' The commentator further characterizes the described arrangement as appearing ''to have an intended benefit for the two corporations at the likely eventual expense of perhaps thousands of individuals with IRAs.'' In addition, the commentator expresses concern that the costs of implementing the proposed exemption would be paid by either taxpayers or ''The IRA owner who gets clobbered with higher and higher fees to pay the costs.''

In response to this comment, the applicant maintains that the proposed exemption is not a modification to existing law, but rather an exception to certain provisions under existing law pursuant to a procedure contemplated by the statute. The applicant represents that PNC's goal in requesting the relief

is not to favor BlackRock, but rather to preserve existing investments in plan and IRA accounts that may no longer be permitted after the changes in the ownership of BlackRock, and also to ensure that BlackRock Funds continue to be available as investments to accounts managed by PNC to the extent that investment in those funds is prudent and meets an account's investment needs. Investments in BlackRock Funds under the exemption are not expected to increase IRA fees, as the structure for complying with the exemption is already in place.

Furthermore, the applicant points out that to the extent the commentator objects to her IRA investing in BlackRock Funds, she can exercise her right under the proposed exemption to withhold her authorization of such investments or, if BlackRock Fund investments have previously been authorized, to terminate that authorization.

Therefore, the applicant concludes that the commentator's comment does not provide any reason why the exemption should not be granted.

The Department concurs.

2. One commentator, in an e-mail, dated April 28, 2009, argued that granting the exemption would be wrong because there is an inherent conflict of interest, giving the following reasons:

(a) No amount of explanation, adjustment/manipulation of fees or documentation of facts can cancel out that conflict.

(b) The very fact that PNC is requesting the exemption shows it is in their interest.

(c) A massive mailing and disgorgement of data does not show this is good for investors. The commentator further argues that it must clearly be convenient and remunerative for PNC to utilize an ''in-house organization'' to control, invest and report on client money, but there is no claim or promise that BlackRock is or would be the best option. The commentator says that because of the bank being placed in conflict with its clients, a PNC manager, when faced with a choice, will opt for BlackRock. Therefore, the commentator concludes, the proposal should be withdrawn.

In response, the applicant represents that the conditions of the exemption are designed to address the potential conflict, namely by requiring fee offsets or credits, disclosures and independent approvals. In the opinion of the applicant, the potential conflict in this case is attenuated in that PNC is a minority owner in BlackRock as a result of the transaction with Merrill Lynch, currently holding only a 33% interest (down slightly from the 34% interest described in the application). Any decisions by PNC portfolio managers to invest in the BlackRock Funds for plans are subject to fiduciary obligations imposed by section 404(a)(1) of the Act, including the duty to act solely in the interest of the plan and its participants and beneficiaries and to act in a prudent manner, and any investment decisions for IRA accounts are subject to similar obligations under State law. PNC's objective is to have BlackRock Funds available in the event it would be prudent to use them, and PNC portfolio managers commonly use other fund families as well.

Further, the applicant points out that if the commentator is concerned about these conflicts, he has the right under the proposed exemption to either withhold his authorization of PNC investing his account in BlackRock Funds or, if he has previously given his authorization, he can exercise his right to terminate that authorization at any time without penalty.

Therefore, the applicant maintains that this comment by the commentator has not provided any reason why the proposed exemption should not be granted.

The Department concurs.

3. One commentator indicated her opposition to any exemption that would authorize additional fees to be charged by PNC Bank. The commentator did not give any further reason.

In response, the applicant notes that the proposed exemption contains a series of protections to deal with the potential for PNC receiving additional fees, including fee offsets and credits. Furthermore, if the commentator continues to be concerned about PNC Bank charging additional fees, she would have the right under the exemption to withhold or terminate authorization of the investment of her account in BlackRock Funds. Therefore, the applicant maintains that the commentator has not provided any reason why the proposed exemption should not be granted.

The Department concurs.

In addition to the comments described above, the Department received, on May 8, 2009, an e-mail from the applicant, requesting certain changes to the operating language of the exemption. The applicant's comment was also posted on the Web site regulation.gov. The applicant's comments are summarized in the numbered paragraphs, below.

1. Fee Disclosure and Differential Language—Section II(h)(2)

Section II(h)(2)(iv), as set forth in the Notice on page 13243, column 2, line 67, requires disclosure of, ''All other fees to be charged to or paid by a Client Plan and by such Fund.'' The applicant believes that disclosure of all Fund fees are within the scope of the exemption, but is not clear that all Client Plan fees should be subject to disclosure. The applicant believes that the focus on the fees charged to or paid by the Client Plan should only be those fees that are related to the investment in a Fund by a Client Plan. Accordingly, the applicant requests that the language of Section II(h)(2)(iv) should be amended to read as follows: ''All other fees to be charged to or paid by a Client Plan in connection with its investment in such Fund and by such Fund.''

In addition, the applicant has requested an amendment to Section II(h)(2), as set forth in the Notice on page 13243, column 2, lines 54–57. Section II(h)(2) requires: ''A statement describing the fees, including the nature and extent of any differential between the rates of such fees'' for: (i) Any investment advisory or similar services to be paid by a Fund to BlackRock, (ii) any Secondary Services to be paid by a Fund to PNC, (iii) any Mutual Fund Administration Services to be paid by BlackRock to PNC, and (iv) all other fees to be charges to or paid by a Client Plan and by a Fund. The applicant believes that the disclosure of the nature and extent of any differential between the rates of such fees should be limited to the fees paid for investment advisory or similar services. In this regard, the applicant request that the phrase, ''including the nature and extent of any differential between the rates of such fees,'' be deleted from Section II(h)(2) and moved to the end of Section II(h)(2)(i) following the word, ''BlackRock.'' Accordingly, the applicant has requested that Section II(h)(2)(i) be amended to read as follows: ''Any investment advisory or similar services to be paid by such Fund to BlackRock, including the nature and extent of any differential between the rates of such fees.''

The limitations suggested by the applicant do not conform to the requirements as set forth in Prohibited Transaction Exemption 77–4 (PTE 77–4).[4] In this regard, PTE 77–4 deals with the receipt of fees by a fiduciary of a plan in connection with the purchase or sale by a plan of shares of a registered, open-end investment company when

[4] 42 FR 18732, April 8, 1977.

such fiduciary or an affiliate is also the investment adviser for such investment company. Section II(d) of PTE 77–4 requires that a second fiduciary with respect to such plan, who is independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof, receive full and detailed written disclosure of the investment advisory and other fees charged to or paid by such plan and by such investment company, including the nature and extent of any differential between the rates of such fees. Accordingly, the Department does not concur with the applicant's request to alter the language of Section II(h)(2) and has not amended Section II(h)(2) in the final exemption. Nor does the Department concur with the applicant's request to alter the language of Section II(h)(2)(iv) and has not amended Section II(h)(2)(iv) in the final exemption.

2. Reference to Part 4 of Title I of the Act—Section II(i)

Section II(i), as set forth in the Notice, requires that on the basis of certain disclosure, a Second Fiduciary, acting on behalf of the Client Plan, authorizes in writing: (1) The investment of the assets of a Client Plan in shares of a particular Fund and (2) the receipt of fees by PNC and by BlackRock in connection with services provided by PNC and by BlackRock to such Fund. The last sentence in Section II(i), as set forth in the Notice on page 13243, column 3, lines 25–29, requires that ''Such authorization by a Second Fiduciary must be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.'' The applicant maintains that ''whether the Second Fiduciary violates its fiduciary duties in providing the authorization is outside the control of PNC and should not affect whether PNC has coverage under the exemption.'' Further, the applicant notes that this language was not included in prior individual exemption providing analogous relief. Therefore, the applicants request that the sentence in Section II(i) referring to the Second Fiduciary's responsibilities under Part 4 of Title I of the Act should be deleted from the final exemption.

The Department does not concur with the applicant's request and has not deleted the last sentence from Section II(i) in the final exemption. In this regard, PTE 77–4 contains language similar to that set forth Section II(i) of the Notice. In this regard, Section II(e) of PTE 77–4, states that ''On the basis of the prospectus and disclosure referred to in paragraph (d), the second fiduciary referred to in paragraph (d) approves such purchase and sales consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.''

3. Statement of Additional Information Disclosure—Section II(m)(2)

Section II(m)(2), as set forth in the Notice on page 13244, column 2, lines 49–52, requires on an annual basis that PNC, serving as fiduciary to a Client Plan, provide the Second Fiduciary of such Client Plan with certain disclosures. Such disclosures should include a copy of a Statement of Additional Information for a Fund, upon request by the Second Fiduciary. Further, such Statement of Additional Information should contain a description of all fees paid to PNC by a Fund and by BlackRock for services provided by PNC to such Fund. The applicant notes that while Statements of Additional Information for Funds do, in fact, describe the Mutual Fund Administration Services fees, such document does not specify the rate of such fees. The applicant argues that such disclosure should be sufficient because the rate of such fees would have been described in the initial disclosure to the Client Plan and cannot be changed without prior notice.

The Department concurs with the applicant's comment.

4. Independent Audit Disclosure—Section II(m)(3)

Section II(m)(3), as set forth in the Notice on page 13244, column 2, lines 56–59, requires that PNC provide the Second Fiduciary of a Client Plan with ''a copy of the annual financial disclosure report which includes information about Fund portfolios, as well as the audit findings of the independent Auditor, within sixty (60) days of the preparation of such report.'' The audit findings referred to in Section II(m)(3) are those required under Section II(a)(3) of the exemption in connection with the audit of the Credit Fee Method. The applicant suggests that the requirement to disclose a copy of the audit finding be deleted from Section II(m)(3) and be made a separate requirement, in a new Section II(m)(5) in the final exemption. Accordingly, the applicant requests that the requirement in Section II(m)(5) apply only to those Client Plans using the Credit Fee Method, described in Section II(a)(3) of the final exemption.

The Department concurs with the applicant's request and has amended Section II(m)(3) to delete the phrase, ''as well as the audit findings of the independent Auditor.'' Further, the Department has included in the final exemption a new Section II(m)(5) which reads, as follows:

> A copy of the audit findings prepared by the independent Auditor, as required by Section II(a)(3), is provided by PNC at least annually within sixty (60) days of the completion of the report of such audit findings, to the Second Fiduciary of those Client Plans using the Credit Fee Method, as described in Section II(a)(3).

5. Change in Fee Method—Section IV(h)(3)(iii)

Section IV(h), as set forth in the Notice on page 13245, column 1, lines 33–68, and column 2, lines 1–4, defines the term, ''Second Fiduciary,'' as a fiduciary of a Client Plan who is independent of and unrelated to PNC and BlackRock. Section IV(h)(2) provides that a Second Fiduciary will not be deemed to be independent if such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, or employee of PNC or of BlackRock (or is a relative of such person). However, Section IV(h)(3) provides an exception to the requirement, set forth in Section IV(2). In this regard, a director of a Second Fiduciary of a Client Plan who is also an officer, director, partner, or employee of PNC or of BlackRock (or a relative of such persons) is permitted to abstain from: (1) The selection of the Client Plan's investment adviser; (2) the approval of any purchase or sale between a Client Plan and a Fund; and (3) ''the approval of any change in fees, as described, above, in Section II (k) or (l), charged to or paid by such Client Plan in connection with any of the transactions described in Section I above.''

The applicant requests that the language of Section IV(h)(3)(iii), as set forth in the Notice on page 13245, column 1, lines 67–68, be revised to insert the phrase, ''or fee method,'' after the phrase, ''any change in fees,'' in order to be consistent with other provisions in the exemption where references to changes of fees also apply to changes in fee methods.

The Department concurs with the applicant's suggestions, and accordingly, has amended the language of Section IV(h)(3)(iii) in the final exemption.

After giving full consideration to the entire record, including the written comment from the applicant and from the commentators, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letters from the applicant and from the commentators which were submitted to the

Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on March 26, 2009, at 74 FR 13242.

FOR FURTHER INFORMATION CONTACT: Angelena Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number).

Verizon Investment Management Corporation, Located in Basking Ridge, New Jersey.

[Prohibited Transaction Exemption 2009–23, Exemption Application No. D–11447.]

Exemption

Section I—Transaction(s)

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[5] shall not apply, effective for the period January 1, through December 31, 2001, and for the period January 1, through December 31, 2003, to any transaction, as described in Part I of Prohibited Transaction Exemption 96–23 (PTE 96–23),[6] between a Verizon Plan or Verizon Plans, as defined, below, in section III(h) of this exemption, and a party in interest, as defined, below, in section III(c) of this exemption, with respect to such Verizon Plan; provided that: during the period January 1, through December 31, 2001, and during the period January 1, through December 31, 2003, VIMCO satisfied the definition of an in-house asset manager (INHAM), as defined, below, in section III(a) of this exemption, and had discretionary authority or control with respect to the assets of such Verizon Plan involved in each such transaction; and the conditions, as set forth, below, in section I(a) through (b) and section II of this exemption were satisfied and, the conditions, as set forth, below, in section I(c) and section II of this exemption are satisfied;

(a) All the requirements of PTE 96–23 were satisfied for the period January 1, through December 31, 2001, and the period January 1, through December 31, 2003, except with respect to the annual audit requirement, as set forth in section I(h) of PTE 96–23;

(b) An exemption audit, as defined, in Part IV(f) of PTE 96–23, for the period January 1, through December 31, 2001, must have been completed by no later than December 31, 2003, and an exemption audit for the period January 1, through December 31, 2003, must have been completed by no later than December 31, 2005; and

(c) If VIMCO, satisfies the definition of an INHAM, as defined, below, in section III(a) of this exemption, at any time during the period beginning on the date of the publication in the **Federal Register** of the final exemption for application D–11447 and ending on the effective date of a final amendment to PTE 96–23, then an independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, must conduct an exemption audit, as defined, below, in section III(f) of this exemption, on an annual basis. Following completion of such exemption audit, the auditor shall issue a written report to the Verizon Plan or Verizon Plans that engage in transactions, described in Part I of PTE 96–23, presenting such auditor's specific findings regarding the level of compliance: (1) with the policies and procedures adopted by VIMCO in accordance with Part I(g) of PTE 96–23; and (2) with the objective requirements of PTE 96–23. The written report shall also contain the auditor's overall opinion regarding whether VIMCO's program complied: (1) With the policies and procedures adopted by VIMCO; and (2) with the objective requirements of PTE 96–23. The exemption audit and the written report must be completed within six (6) months following the end of the year to which the audit relates.

Section II—General Conditions

(a) VIMCO must maintain or cause to be maintained, for a period of six (6) years, such records as are necessary to enable the persons described, below, in section II(b) of this exemption, to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of VIMCO, such records are lost or destroyed prior to the end of the six-year period, and

(2) No party in interest with respect to a Verizon Plan which engages in a transaction, described in section I of this exemption, other than VIMCO, shall be subject to a civil penalty under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by section II(b) of this exemption.

(b)(1) Except as provided, below, in section II(b)(2) of this exemption, and notwithstanding any provisions of section 504(a)(2) of the Act, the records referred to, above, in section II(a) of this exemption, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department of Labor (the Department) or the Internal Revenue Service,

(ii) Any fiduciary of a Verizon Plan that engages in a transaction, described in Part I of PTE 96–23, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of a Verizon Plan or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described, above, in section II(b)(1)(ii) and (iii) of this exemption, shall be authorized to examine trade secrets of VIMCO, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For the purposes of this exemption:

(a) The term, ''in-house asset manager'' or ''INHAM,'' means VIMCO, provided that VIMCO is:

(1) Either (A) a direct or indirect wholly-owned subsidiary of Verizon Communications, Inc. (Verizon), or a direct or indirect wholly-owned subsidiary of a parent organization of Verizon, or (B) a membership non-profit

[5] The Department, herein, is not providing any retroactive or prospective relief for a transaction between a plan (a Verizon Plan or Verizon Plans), as defined, below, in section III(h) of this exemption, and a party in interest with respect to such Verizon Plan, if such transaction was entered into or is entered into in years other than 2001 and 2003, nor is the Department, herein, providing any retroactive or prospective relief for any continuing transaction, or for any subsequent renewal or modification of a transaction that required or requires the consent of Verizon Investment Management Corporation (VIMCO), if entry into such continuing transaction, or entry into such renewal or modification occurred or occurs in years other than 2001 and 2003. In order to obtain relief for the entry into a transaction, or the entry into a continuing transaction or a subsequent renewal or modification of a transaction, as the case may be, VIMCO must have satisfied or must satisfy at the time of each such transaction, the terms and conditions as set forth in PTE 96–23 or, if applicable, the terms and conditions of PTE 96–23 as hereafter amended.

[6] 61 FR 15975, April 10, 1996.

corporation a majority of whose members are officers or directors of Verizon or a parent organization; and

(2) An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to Verizon Plans maintained by affiliates of VIMCO, as defined, below, in section III(b) of this exemption, in excess of $50 million; and provided that if VIMCO had no prior fiscal year as a separate legal entity as a result of its constituting a division or group within Verizon's organizational structure, then this requirement is deemed to have been met as of the date during VIMCO's initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from Verizon.

In addition, Verizon Plans maintained by affiliates of VIMCO and/or by VIMCO, have aggregate assets of at least $250 million, calculated as of the last day of each such Verizon Plan's reporting year.

(b) For purposes of sections III(a) and III(h) of this exemption, an ''affiliate'' of VIMCO means a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which VIMCO is a member, or

(2) A group of trades or businesses under common control, as defined in section 414(c) of the Code, of which VIMCO is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the Code or the rules thereunder.

(c) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(d) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this exemption, the time as of which any transaction occurred is the date upon which the transaction was entered into. In addition, the time as of which any renewal or modification of any transaction occurred is the date upon which the renewal or the modification of the transaction was entered into. For any transaction that required the consent of VIMCO that was entered into, renewed, or modified, as the case may be, during the period from January 1, through December 31, 2001, or during the period from January 1, through December 31, 2003, the requirements of this exemption must have been satisfied at the time such transaction was entered into, or was renewed, or was modified, as the case may be. In addition, in the case of a transaction that is continuing, the transaction is deemed to occur until it is terminated.

Nothing in this paragraph shall be construed as exempting a transaction entered into by a Verizon Plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code, while the transaction is continuing, unless the conditions of PTE 96–23 were met at the time the transaction was entered into, or at the time the transaction would have become prohibited but for PTE 96–23. In determining compliance with the conditions of PTE 96–23 at the time that the transaction was entered into for purposes of the preceding sentence, Part I(e) of PTE 96–23, will be deemed satisfied if the transaction was entered into between a Verizon Plan and a person who was not then a party in interest.

(f) Exemption Audit. An ''exemption audit'' of a Verizon Plan must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by VIMCO, pursuant to Part I(g) of PTE 96–23, for consistency with each of the objective requirements of PTE 96–23, as described below, in section III(g) of this exemption.

(2) A test of a sample of VIMCO's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis: (A) to make specific findings regarding whether VIMCO is in compliance with (i) the written policies and procedures adopted by VIMCO, pursuant to Part I(g) of PTE 96–23 and (ii) the objective requirements of PTE 96–23, as described below, in section III(g) of this exemption and (B) to render an overall opinion regarding the level of compliance of VIMCO's program with section III(f)(2)(A)(i) and (ii) of this exemption.

(3) A determination as to whether VIMCO satisfied the definition of an INHAM, as defined, above, in section III(a), of this exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(g) For purposes of section III(f), above, of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by VIMCO to assure compliance with each of these requirements:

(1) The definition of an INHAM in section III(a) of this exemption.

(2) The requirements of Part I and Part I(a) of PTE 96–23 regarding the discretionary authority or control of VIMCO with respect to the assets of a Verizon Plan involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of such Verizon Plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of Part I(a) of PTE 96–23.

(4) For a transaction described in Part I of PTE 96–23:

(A) That the transaction is not entered into with any person who is excluded from relief under Part I(e)(1), Part I(e)(2) of PTE 96–23, to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Part I(f) of PTE 96–23, and

(B) That the transaction is not described in any of the class exemptions listed in Part I(b) of PTE 96–23.

(h) The term, ''Verizon Plan(s),'' means a plan or plans maintained by VIMCO or an affiliate of VIMCO.

Effective Date: This exemption is effective for the period from January 1, through December 31, 2001, and for the period from January 1, through December 31, 2003.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on February 25, 2009. All comments and requests for a hearing were due by April 13, 2009.

During the comment period, the Department received no requests for a hearing. However, the Department received, on April 9, 2009, a facsimile from the applicant, informing the Department of a correction to the language of the exemption, as proposed in the Notice. In this regard, the references to ''Verizon Investment Management Company,'' as set forth in the heading of the Notice on page 8571, in the heading of the Proposed Exemption on page 8572, and in the language in footnote no. 2 on page 8572, should be revised to read ''Verizon Investment Management Corporation.''

The Department acknowledges the correction, as requested by the applicant, and in the final exemption has amended the references to Verizon Investment Management Corporation.

In addition to the correction described above, the applicant requested: (1) An amendment to the exemption audit conditions of section I(c); (2) a change of the effective date of section I(c); and (3) a change in the definition of an INHAM, in section III(a), as set forth in the Notice. The applicant's comments are sumarized in the paragraphs, below.

Timing of Exemption Audit

Section I(c) of the Notice, as set forth on page 8572, column 3, in lines 56–59, requires that the exemption audit and the written audit report must be completed within six (6) months following the end of the year to which such audit relates.

In its comment, VIMCO states that it understands the appropriateness of imposing a timing condition on future audits. However, VIMCO maintains that six (6) months after the end of the plan year is a relatively short period considering the volume of corporate and employee benefit activities that VIMCO engages in at that time of year. Accordingly, VIMCO requests that this deadline should be one (1) year following the end of the year to which such audit relates, rather than six (6) months. In this regard, VIMCO maintains that a one-year deadline would be consistent with the requirement that an exemption audit be performed annually and would avoid the unintended loss of the exemption due to inadvertent delays in the exemption audit process.

The Department does not concur with the applicant's request and has not amended the six (6) month audit requirement, set forth in section I(c) of this exemption. In this regard, it is the Department's view that the six (6) month audit requirement is reasonable. The Department believes that extending the audit requirement beyond the six (6) month requirement would result in audit reports which would not be timely.

Exemption Audit Conditions

Section I(c), as set forth on page 8572, column 3, in lines 50–55, also requires that that the written report of the exemption audit must contain:

> The auditor's overall opinion regarding whether VIMCO's program complied: (1) With the policies and procedures adopted by VIMCO; and (2) with the objective requirements of PTE 96–23.

The applicant believes that the requirement imposed in section I(c) of the Notice goes beyond the frameowrk envisioned by PTE 96–23. In this regard, VIMCO notes that in the preamble to PTE 96–23, the auditor was not required to reach any opinion regarding compliance. The auditor was simply to make the findings based on its review. In the opinion of the applicant, the requirement set forth in section I(c) of the Notice, would cause additional review and expense. In addition, the applicant points out that this requirement may trigger issues for accounting firms and law firms under their respective professional standards. The applicant suggests that, if the Department intends to impose this requirement generally on INHAMs in the course of amending PTE 96–23, then the Department should do so in that proceeding, at which time this requirement can be subject to a broader range of comments that would better define the issues.

The Department does not concur with the applicant's request and has not amended this requirement, as set forth in section I(c) of this exemption. It is the Department's view that it is not unreasonable to require an auditor to issue a written report which presents such auditor's specific findings regarding the level of compliance with the policies and procedures adopted by VIMCO, and with the objective requirements of PTE 96–23. Further, the Department believes that it is reasonable to require the auditor's written report to contain such auditor's overall opinion regarding whether VIMCO's program complied with the policies and procedures adopted by VIMCO, and with the objective requirements of PTE 96–23, based on a representative sample of the transactions.

Effective Date for Condition I(c) of the Exemption

The effective date for section I(c), as set forth in the Notice at page 8572, column 3, in lines 25–30, is stated as follows:

> (c) For the period beginning on the date of the publication in the **Federal Register** of the final exemption for application D–11447 and ending on the effective date of the final amendment to PTE 96–23, * * *.

The applicant points out that the final exemption will not necessarily be published at the beginning or end of a calendar year or at the beginning or end of an audit period. Accordingly, the applicant is concerned that if an exemption audit covers an annual period which straddles the effective date, as set forth in section I(c) of the exemption, the exemption audit could be subject to two different sets of standards. To avoid this problem, the applicant requests that the effective date for section I(c) of the exemption should be changed to the beginning of the first fiscal year of VIMCO after publication of the final exemption in the **Federal Register**.

The Department does not concur with the applicant's request and has not amended the effective date, as set forth in section I(c) of this exemption. In this regard, the Department notes that satisfaction of the exemption audit requirement, as set forth in this exemption, will also satisfy the exemption audit requirements, as set forth in PTE 96–23 if the audit period straddles both this final exemption and PTE 96–23. Accordingly, any exemption audit covering an annual period that straddles the effective date, as set forth in section I(c) of this exempiton, will not be subject to two different sets of standards.

Definition of an INHAM

Section III(a) of the exemption, as set forth in the Notice on page 8573, column 1, in lines 50–68, and continuing on page 8573, column 2, in lines 1–21, defines the term, ''in-house asset manager'' or ''INHAM.'' The definition of an ''in-house asset manager'' or ''INHAM,'' as set forth in the Notice, requires that an INHAM must satisfy certain criteria on January 1, 2001, and at all times thereafter. Specifically, section III(a) of the exemption reads as follows:

> (a) The term ''in-house asset manager'' or ''INHAM,'' means VIMCO, provided that VIMCO on January 1, 2001, was and continued thereafter to be:
>
> (1) Either (A) a direct or indirect wholly-owned subsidiary of Verizon, or a direct or indirect wholly-owned subsidiary of a parent organization of Verizon, or (B) a membership non-profit corporation a majority of whose members are officers or directors of such an employer or parent organization; and
>
> (2) An investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, had and continued thereafter to have under its management and control total assets attributable to Verizon Plans maintained by affiliates of VIMCO, as defined, below, in section III(b) of this exemption, in excess of $50 million; and provided that if VIMCO had no prior fiscal year as a separate legal entity as a result of its constituting a division or group within Verizon's organizational structure, then this requirement is deemed to have been met as of the date during VIMCO's initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from Verizon.
>
> In addition, Verizon Plans maintained by affiliates of VIMCO and/or by VIMCO, had, as of January 1, 2001, and continued thereafter to have, aggregate assets of at least $250 million, calculated as of the last day of each such Verizon Plan's reporting year.

The applicant is concerned that the definition of an INHAM, as set forth in the proposed exemption, would require

that VIMCO continue to meet certain criteria at all times after January 1, 2001. According to the applicant, ''this raises the question of whether VIMCO would lose all relief under the exemption in the event that it ceases at some point in the future to meet those criteria.'' Accordingly, the applicant requests that ''to avoid this problem, the exemption should provide that in the event VIMCO ceases to meet the terms of the definition, it ceases to be an INHAM only prospectively, and therefore does not lose relief for prior transactions.''

The Department concurs with the applicant's request. In this regard, the Department notes that the retroactive exemptive relief effective for the period from January 1, through December 31, 2001, and from January 1, through December 31, 2003, will continue to apply, even if in the future, VIMCO ceases to satisfy the definition of an INHAM, as set forth in section III(a) of this exemption. However, if VIMCO, satisfies the definition of an INHAM, as defined, above, in section III(a) of this exemption, at any time during the period, beginning on the date of the publication in the **Federal Register** of the final exemption for application D–11447 and ending on the effective date of a final amendment to PTE 96–23, then retroactive exemptive relief effective for the period from January 1, through December 31, 2001, and from January 1, through December 31, 2003, will *not* continue to apply, unless the conditions, as set forth, in section I(a) through (b) and section II of this exemption, were satisfied during the period January 1, through December 31, 2001, and during the period January 1, through December 31, 2003, and the conditions, as set in section I(c) and section II of this exemption, are satisfied, during the period, beginning on the date of the publication in the **Federal Register** of the final exemption for application D–11447 and ending on the effective date of a final amendment to PTE 96–23. Accordingly, the Department has amended this exemption, as follows:

(1) In section III(a) to delete the phrase, ''on January 1, 2001, was and continued thereafter to be,'' as set forth in the Notice on page 8573, column 1, in lines 52–53, and to insert the word, ''is,'' after the phrase, ''provided that VIMCO,''

(2) In section III(a)(2) to delete the phrase, ''had and continued thereafter to have,'' as set forth in the Notice on page 8573, column 1, in lines 64–66, and to add the word, ''has,'' after the word, ''year,''

(3) In the last paragraph of section III(a)(2), as set forth in the Notice on page 8573, column 2, in lines 17–18, to delete the phrase, ''had, as of January 1, 2001, and continued thereafter to have,'' and to add the word, ''have,'' after the word, ''VIMCO,''

(4) In section I, as set forth in the Notice on page 8572, column 2, in line 45, to add the phrase, ''during the period January 1, through December 31, 2001, and during the period January 1, through December 31, 2003,'' after the phrase, ''provided that:,''

(5) In section I, as set forth in the Notice on page 8572, column 3, in lines 6–8, to delete the phrase, ''in sections I(a) through (c) and section II of this proposed exemption were satisfied,'' and to add the phrase, ''in section I(a) through (b) and section II of this exemption were satisfied and, the conditions, as set forth, below, in section I(c) and section II of this exemption are satisfied,'' and

(6) To amend the first sentence in section I(c), as set forth in the Notice on page 8572, column 3, in lines 25–38 to read as follows:

If VIMCO, satisfies the definition of INHAM, as defined, below, in section III(a) of this exemption, at any time during the period beginning on the date of the publication in the **Federal Register** of the final exemption for application D–11447 and ending on the effective date of a final amendment to PTE 96–23, then an independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, must conduct an exemption audit, as defined, below, in section III(f) of this exemption, on an annual basis.

Further, the Department wishes to make the following clarifying amendments to this exemption:

(1) To amend the second sentence in section I(c), as set forth in the Notice on page 8572, column 3, in lines 42–43, to delete the phrase, ''in section I of this proposed exemption,'' and to substitute instead the phrase, ''in Part I of PTE 96–23,''

(2) To amend section II(b)(1)(ii), as set forth in the Notice on page 8573, column 1, in line 33, to delete the phrase, ''in section I of this exemption,'' and add the phrase, ''in Part I of PTE 96–23,''

(3) To amend section III(a)(1), as set forth in the Notice on page 8573, column 1, in line 55, to delete the word, ''Verizon,'' and substitute instead, the phrase, ''Verizon Communications, Inc. (Verizon),'' and

(4) To amend section III(a)(1), as set forth in the Notice on page 8573, column 1, in lines 60–61, to delete the phrase, ''such an employer,'' and substutite instead, the word, ''Verizon.''

Request for an Extension of Time

In addition to the applicant's comment on the language of the final exemption, the applicant seeks a ninety (90) day extension of time to complete the audit for 2008, as set forth under section I(c) of this exemption. In this regard, section I(c) of this exemption requires the following, ''The exemption audit and the written report must be completed within six (6) months following the end of the year to which the audit relates.'' The applicant is concerned that VIMCO will not be able to meet a June 30, 2009, deadline for the 2008 audit, as required pursuant to section I(c) of this exemption. In this regard, it is represented that the attorneys who have performed all of VIMCO's audits, pursuant to PTE 96–23, beginning with the 2003 audit have moved to a new law firm early in 2009. Notwithstanding that VIMCO sent in the audit materials for 2008, and notwithstanding negotiations over a period of several months, VIMCO and the new law firm have thus far been unable to agree upon terms of an engagement letter. This result was not anticipated by VIMCO or the attorneys. It is represented that VIMCO is confident that it will be able to complete the audit within the requested extension period, including hiring new auditors who are qualified to conduct the audit should that be necessary.

The Department concurs with the applicant's request and will permit VIMCO a 90 day extension of time from the date of the publication in the **Federal Register** of the grant of this exemption to complete the exemption audit and the written report for 2008.

After giving full consideration to the entire record, including the written comment from the applicant and the applicant's request for an extension of time to complete the exemption audit and written report for 2008, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letter and the request for an extension of time to complete the exemption audit and written report for 2008 which the applicant submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on February 25, 2009, at 74 FR 8572.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number).

United States Steel and Carnegie Pension Fund (the Applicant), Located in New York, NY.

[Prohibited Transaction Exemption 2009–24; Exemption Application No. D–11465.]

Exemption

I. Retroactive Relief

The restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, for the period beginning February 15, 2003 through December 31, 2007, to a transaction between a party in interest with respect to the Former U.S. Steel Related Plans, as defined in Section IV(e), below, and an investment fund in which such plans have an interest (the Investment Fund), as defined in Section IV(l), below, provided that United States Steel and Carnegie Pension Fund or its successor (collectively, UCF) has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets, including in-house assets (In-house Plan Assets), as defined in Section IV(h), below, under its management and control in excess of $100,000,000 and equity, as defined in Section IV(k), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section IV(n), below, the party in interest or its affiliate, as defined in Section IV(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate UCF as a manager of any of the Former U.S. Steel Related Plans' assets, or

(2) Negotiate the terms of the management agreement with UCF (including renewals or modifications thereof) on behalf of the Former U.S. Steel Related Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (PTE 81–6),[7] relating to securities lending arrangements (as amended, superseded or replaced);

(2) Prohibited Transaction Exemption 83–1 (PTE 83–1),[8] relating to acquisitions by plans of interests in mortgage pools (as amended or superseded), or

(3) Prohibited Transaction Exemption 88–59 (PTE 88–59),[9] relating to certain mortgage financing arrangements (as amended or superseded);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of UCF, and either UCF, or (so long as UCF retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by UCF, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of UCF, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's-length transactions between unrelated parties;

(f) Neither UCF nor any affiliate thereof, as defined in Section IV(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in UCF is a person who, within the ten (10) years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) Any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) Income tax evasion;

(4) Any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) Any other crimes described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Former U.S. Steel Related Plans (including a fiduciary) solely by reason of providing services to the Former U.S. Steel Related Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; and

(3) Is neither UCF nor a person related to UCF, as defined in Section IV(j), below;

(i) UCF adopts written policies and procedures that are designed to assure compliance with the conditions of this exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section IV(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Former U.S. Steel Related Plans presenting its specific findings regarding the level of compliance: (1) With the policies and procedures adopted by UCF in accordance with Section I(i), above, of this exemption; and (2) with the objective requirements of this exemption.

(k)(1) UCF or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2) to determine whether the conditions of this exemption have been met, except that (A) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UCF and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (B) no party in interest

[7] 46 FR 7527, January 23, 1981. PTE 81–6 was amended and replaced by PTE 2006–16 (71 FR 63786, October 31, 2006). The effective date of PTE 2006–16 was January 2, 2007, and PTE 81–6 was revoked as of that date.

[8] 48 FR 895, January 7, 1983.

[9] 53 FR 24811, June 30, 1988.

or disqualified person other than UCF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records have not been maintained or are not maintained, or have not been available or are not available for examination as required by Section I(k)(2), below, of this exemption.

(2) Except as provided in Section I(k)(3), below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), above, of this exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or of the Internal Revenue Service;

(B) Any fiduciary of any of the Former U.S. Steel Related Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any of the Former U.S. Steel Related Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) Any participant or beneficiary of any of the Former U.S. Steel Related Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and

(E) Any employee organization whose members are covered by such Former U.S. Steel Related Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this exemption shall be authorized to examine trade secrets of UCF or its affiliates or commercial or financial information which is privileged or confidential; and

(l) With respect to the transactions described in Section II and Section III of this exemption, the conditions contained in those Sections are satisfied through the date which is five (5) years from the date of the publication of this final exemption in the **Federal Register**.

II. Interim Relief

The restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, for the period beginning on January 1, 2008 and ending on the day preceding the first day of the first fiscal year of UCF beginning after the date of the publication of this final exemption in the **Federal Register**, to a transaction between a party in interest with respect to the Former U.S. Steel Related Plans, as defined in Section IV(e), below, and the Investment Fund, as defined in Section IV(l), below, provided that UCF has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) Each of the conditions contained in paragraphs (a) through (k) of Section I are met; and

(b) With respect to the exemption audit and written report by the independent auditor described in Section I(j), the independent auditor must complete each such exemption audit and must issue such written report to the administrators, or other appropriate fiduciary of the Former U.S. Steel Related Plans within six (6) months following the end of the year to which each such exemption audit and report relates.

III. Prospective Relief

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply, for the period beginning with the first day of the first fiscal year of UCF after the date of the publication of this final exemption in the **Federal Register**, and expiring five years from that date, to a transaction between a party in interest with respect to the Former U.S. Steel Related Plans, as defined in Section IV(e), below, and the Investment Fund, as defined in Section IV(l), below, provided that UCF has discretionary authority or control with respect to the plan assets involved in the transaction, and the following conditions are satisfied:

(a) UCF is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets, including In-house Plan Assets, under its management and control in excess of $100,000,000 and equity, as defined in Section IV(k), below, in excess of $1,000,000 (as measured yearly on UCF's most recent balance sheet prepared in accordance with generally accepted accounting principles);

(b) Each of the conditions contained in paragraphs (c) through (i), and (k) of Section I are met;

(c) An independent auditor, who has appropriate technical training, or experience and proficiency with the fiduciary responsibility provisions of the Act, and who so represents in writing, conducts an exemption audit, as defined, below, in Section IV(g) of this exemption, on an annual basis. In conjunction with the completion of each such exemption audit, the independent auditor must issue a written report to the Former U.S. Steel Related Plans that engaged in such transactions, presenting its specific findings with respect to the audited sample regarding the level of compliance with the policies and procedures adopted by UCF, pursuant to Section I(i) of this exemption, and with the objective requirements of the exemption. The written report also shall contain the auditor's overall opinion regarding whether UCF's program as a whole complied with the policies and procedures adopted by UCF and with the objective requirements of this exemption. The independent auditor must complete each such exemption audit and must issue such written report to the administrators, or other appropriate fiduciary of the Former U.S. Steel Related Plans within six (6) months following the end of the year to which each such exemption audit and report relates; and

(d) At the time of the transaction, as defined in Section IV(n), below, the party in interest or its affiliate, as defined in Section IV(p), below, does not have the authority to—

(1) Appoint or terminate UCF as a manager of any of the plan assets of the Former U.S. Steel Related Plans involved in the transaction, or

(2) Negotiate the terms of the management agreement with UCF (including renewals or modifications thereof) on behalf of the Former U.S. Steel Related Plans with respect to the plan assets involved in the transaction.

IV. Definitions

(a) For purposes of Section I(b) of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan will also be considered affiliates with respect

to each other for purposes of Section I(b), above, if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person) or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section IV(e) and (h), below, of this exemption, an ''affiliate'' of UCF includes a member of either:

(1) A controlled group of corporations, as defined in section 414(b) of the Code, of which United States Steel Corporation or its successor (collectively, U.S. Steel) is a member, or

(2) A group of trades or businesses under common control, as defined in section 414(c) of the Code, of which U.S. Steel is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) ''Former U.S. Steel Related Plans'' mean:

(1) Retirement Plan of Marathon Oil Company, Marathon Petroleum LLC Retirement Plan and the Speedway SuperAmerica LLC Retirement Plan (the Marathon Plans);

(2) Pension Plan of RMI Titanium Company (RMI), Pension Plan of Eligible Employees of RMI Titanium Company, Pension Plan for Eligible Salaried Employees of RMI Titanium Company, and Tradco Pension Plan (the RTI Plans);

(3) Any plan the assets of which include or have included assets that were managed by UCF as an in-house asset manager (INHAM) pursuant to Prohibited Transaction Class Exemption 96–23 (PTE 96–23) [10] but as to which PTE 96–23 is no longer available because such assets are not held under a plan maintained by an affiliate of UCF (as defined in Section IV(c) of this exemption); and

(4) Any plan (an Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of UCF (as defined in Section IV(c), above, of this exemption); provided that:

(A) The assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund), as defined in Section IV(o) of this exemption, with the assets of a plan or plans (the Commingled Plans), described in Section IV(e)(1)–(3), above; and

(B) The assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the initial commingling of their assets (the 25% Test).

For purposes of the 25% Test, as set forth in Section IV(e)(4):

(i) In the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund;

(ii) Where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section IV(e)(1)–(3), above, of the exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund;

(iii) If the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section IV(e), above, this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of:

(AA) A distribution to a participant in a Former U.S. Steel Related Plan;

(BB) Periodic employer or employee contributions made in accordance with the terms of the governing plan documents;

(CC) The exercise of discretion by a Former U.S. Steel Related Plan participant to re-allocate an existing account balance in a Commingled Fund managed by UCF or to withdraw assets from a Commingled Fund; or

(DD) An increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(iv) If, as a result of a decision by an employer or a sponsor of a plan described in Section IV(e)(1)–(3) of the exemption to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund; and

(v) Where the assets of a Commingled Fund include assets of plans other than Former U.S. Steel Related Plans, as defined in Section IV(e), above, of this exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

(f) For purposes of Sections I and II of this exemption, ''Exemption Audit'' of any of the Former U.S. Steel Related Plans must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by UCF, pursuant to Section I(i) of this exemption, for consistency with each of the objective requirements of this exemption, as described, below, in Section IV(f)(5) of this exemption; and

(2)(i) A test by an independent auditor of a representative sample of the Plan's transactions in order to make findings regarding whether UCF is in compliance with:

(I) The written policies and procedures adopted by UCF pursuant to Section I(i) of this exemption, and

(II) The objective requirements described in Section I of this exemption;

[10] 61 FR 15975, April 10, 1996.

(3) A determination as to whether UCF has satisfied the requirements of Section I(a), above, of this exemption;

(4) The issuance by an independent auditor of a written report describing the steps performed by such independent auditor during the course of its review and such independent auditor's findings.

(5) For purposes of Section IV(f) of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by UCF to assure compliance with each of these requirements:

(A) The requirements of Section I(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and equity;

(B) The requirements of Section I of this exemption, regarding the discretionary authority or control of UCF with respect to the assets of the Former U.S. Steel Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former U.S. Steel Related Plans to enter into the transaction;

(C) The transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, or Section I(h)(2) to the extent that such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) The transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(g) For purposes of Section III of this exemption, ''Exemption Audit'' of any of the Former U.S. Steel Related Plans must consist of the following:

(1) A review by an independent auditor of the written policies and procedures adopted by UCF pursuant to section I(i) for consistency with each of the objective requirements of this exemption (as described in section IV(g)(5)(A)–(D)).

(2) A test of a sample of UCF's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis: (A) To make specific findings regarding whether UCF is in compliance with (i) the written policies and procedures adopted by UCF pursuant to section I(i) of the exemption and (ii) the objective requirements of the exemption; and (B) to render an overall opinion regarding the level of compliance of UCF's program with this section IV(g)(2)(A)(i)and (ii) of the exemption;

(3) A determination as to whether UCF has satisfied the requirements of Section III(a), above, of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of this section IV(g), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by UCF to assure compliance with each of these requirements:

(A) The requirements of Section III(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and equity;

(B) The requirements of Section I(d) of this exemption, regarding the discretionary authority or control of UCF with respect to the assets of the Former U.S. Steel Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former U.S. Steel Related Plans to enter into the transaction;

(C) The transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, or Section I(h)(2) to the extent that such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) The transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(h) ''In-house Plan Assets'' means the assets of any plan maintained by an affiliate of UCF, as defined in Section IV(c), above, of this exemption and with respect to which UCF has discretionary authority or control.

(i) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(j) UCF is ''related'' to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in U.S. Steel, or if UCF (or a person controlling, or controlled by UCF) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term, ''interest,'' means with respect to ownership of an entity—

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

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

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

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(k) For purposes of Section I(a) of this exemption, the term, ''equity'' means the equity shown on the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(l) ''Investment Fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trust and common collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of UCF) is subject to the discretionary authority of UCF.

(m) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(n) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when this exemption is published in the **Federal Register** or a renewal that requires the consent of UCF occurs on or after such publication date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406(a) of the Act or section 4975(c)(1)(A) through (D) of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for

purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(o) ''Commingled Fund'' means a trust fund managed by UCF containing assets of some or all of the plans described in Section IV(e)(1)–(3) of this exemption, plans other than Former U.S. Steel Related Plans, and if applicable, any Add-On Plan, as to which the 25% Test provided in Section IV(e)(4) of this exemption have been satisfied; provided that:

(1) Where UCF manages a single sub-fund or investment portfolio within such trust, the sub-fund or portfolio will be treated as a single Commingled Fund; and

(2) Where UCF manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by UCF within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

(p) For purposes of Section III(d) of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, ten percent (10%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets.

A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Section III(d), above, if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement. *Reliance.* The exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified herein.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption is temporary in nature. The exemption, is effective February 15, 2003, and will expire on the day which is five (5) years from the date of the publication of this final exemption in the **Federal Register.** Accordingly, the relief provided by this exemption will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into before the expiration of the five-year period. Should the Applicant wish to extend, beyond the expiration of such five-year period, the relief provided by this exemption to new or additional transactions, the Applicant may submit another application for exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on December 24, 2008 at 73 FR 79186.

Written Comments

The Department received one comment with respect to the Notice, which was filed by the Applicant. The Applicant addressed several points in the Notice in its comment letter. The Applicant's commentary, a discussion of the Department's views in response thereto and the modifications to the proposed exemption are discussed below.

The Applicant's first comment focused on condition III(c) of the Notice regarding the written report to be issued by an independent auditor. As a condition for prospective relief, such report must contain the auditor's overall opinion regarding whether UCF's program, as a whole, complied with the policies and procedures adopted by UCF and with the objective requirements of the exemption. The Applicant asked the Department to clarify or further explain this condition. In addition, the Applicant requested further guidance on the selection and testing of the representative sample of transactions.

With regard to these comments, the Department wishes to note that because the auditor necessarily has to use its experience and judgment in designing and conducting a particular audit, the auditor must take into account the totality of the facts and circumstances in determining the appropriate size and types of transactions to audit. Based upon the specific sample of transactions tested during the audit period, we expect the auditor to render an overall opinion regarding the level of compliance of UCF's program with the objective requirements of the exemption. The Department notes, however, that in certain instances, an auditor may need to construct and test more than one sample of transactions. For example, an auditor may initially believe that the most appropriate way to make the required findings is to construct a sample that represents a subset of the total universe of relevant transactions engaged in by UCF under the exemption. In testing the sample, however, the auditor should look for, and may find, patterns of compliance failures that indicate that certain types of transactions are more prone to compliance failures than others. If such patterns appear, the auditor may need to test additional transactions to more accurately assess the extent and causes of non-compliant transactions. Ultimately, an auditor must construct and test a sampling of transactions that is sufficient in size (*i.e.,* number of transactions) and nature (*i.e.,* type of transactions) to afford the auditor a reasonable basis to make its required determinations under the exemption. Since the sole purpose of the audit is to assure compliance with the exemption, the sample should be sufficient in size and nature for the auditor to render an overall opinion regarding whether UCF's program complied with the objective requirements of the exemption and of its own policies and procedures. If the sample of transactions selected for testing by the independent auditor is properly designed so that it contains the appropriate weighting of representative transactions and if no instances of non-compliance are discovered, the auditor could then proceed to issue an overall opinion, without performing any further audit work, that, based upon its sampling of transactions, UCF's program as a whole complied with the policies and procedures adopted by UCF and with the objective requirements of the exemption. If, on the other hand, the auditor determined that a single transaction from the representative sample did not conform to the conditions for exemptive relief, the auditor must then determine whether the overall opinion could be issued without expanding the scope of the audit and conducting further testing. If the auditor were to decide that further auditing would not be necessary based upon valid documented reasoning (*e.g.,* the auditor's report explains why the auditor was able to determine why non-

compliance with respect to the single transaction was an isolated violation), the auditor could then issue the required overall opinion. It is noted that in such a case, the exemptive relief would not be available for a single transaction that did not satisfy the conditions of the exemption, but that exemptive relief would continue to be available for the remaining transactions provided that they met the conditions of the exemption.

The Applicant also raised some related questions that concerned item number 14 in the Summary of Facts and Representations of the Notice, which enumerated several items to be included in the auditor's written report required for prospective relief. The Applicant asked the Department to explain the difference between the content of subparagraph (ii) of item 14 of the facts and representations and subparagraph (v), because both items relate to the sample selected for review by the auditor. The Department responds that subparagraph (ii) focuses on the general process and methodology used to select the representative sample, whereas subparagraph (v) requires an explanation regarding the appropriateness of the specific sample size selected for review and taking into account instances of non-compliance.

In addition, the Applicant commented with respect to subparagraph (vi) of item number 14 in the Summary of Facts and Representations of the Notice. The Applicant commented that the subparagraph as written would require the auditor to determine the adequacy of the Plan's written policies and procedures, described in Section I(i), and their administration by UCF. The Applicant requested that this provision be made consistent with PTE 96–23, which requires that the auditor review the written policies and procedures of the INHAM not for ''adequacy,'' but rather for ''consistency'' with the objective requirements of the exemption. The Department agrees with this comment and notes that the requirement that an auditor determine the adequacy of UCF's written policies and procedures, described in Section I(i), is deleted. However, the Department notes that where there is a pattern of failure to comply rather than an isolated instance of non-compliance, the Department expects that the auditor would review UCF's policies and procedures to determine whether the weakness of the written policies and procedures contributed to this general pattern of non-compliance.

The Applicant next commented with respect to the requirement for prospective relief that the written audit reports be issued within six months following the end of the year to which the audit relates. The comment referred to other tasks which UCF must perform following the end of a year, and requested that the period be lengthened to one year following the end of the year to which the audit relates, rather than six months. The Department is not persuaded by this comment, and also believes that an additional six month delay is inconsistent with the underlying purposes of the annual audit requirement. Accordingly, the Department has not made the requested modification.

The Applicant also commented with respect to the effective dates of Section II of the exemption, which provides ''Interim Relief,'' and Section III, which provides ''Prospective Relief.'' The Applicant pointed out that as written in the Notice, there was a gap between the end of the effective period for interim relief and the beginning of the effective period for prospective relief. In addition, the Applicant noted that the effective dates will not necessarily come out at the beginning or end of a year or of an audit period. This would raise questions under two of the conditions of the prospective relief. First, the $1 million equity requirement of Section III(a) must be met as of the date of UCF's most recent balance sheet. Second, if an exemption audit covers an annual period that straddles the effective dates, the audit could be subject to two differing sets of standards. The Applicant recommended that to avoid these problems, the effective date for prospective relief should begin at the start of the first fiscal year of UCF after the date of publication of this final exemption in the **Federal Register**, and the end date of the interim relief should be concomitantly extended. The Department agrees with this comment and has modified the final exemption accordingly.

The Applicant also pointed out a cross-reference in the Notice that should be changed. In Section IV(g)(1), the parenthetical should reference subparagraphs IV(g)(5)(A)–(D) instead of subparagraphs IV(f)(5)(A)–(D). The Department agrees and had made the change in the exemption.

The Applicant also commented that in section II(a), the reference should be to subparagraphs (a) through (k) of Section I instead of subparagraphs (a) through (l), since subparagraph (l) refers to Section II. The Department agrees with this comment and has modified Section II(a) accordingly. Although it is the Department's intention that the retroactive relief in this case be conditioned upon the Applicant's good faith satisfaction of prospective conditions for future transactions, the Department believes that it is appropriate to make the retroactive relief contingent upon meeting the conditions for prospective relief for a finite period. Accordingly, in order for the Applicant to qualify for retroactive relief, it must comply with Sections II and III, as appropriate, through the date which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. The Department has modified Section I(l) accordingly to reflect this requirement.

The Applicant also requested that the Department clarify that in the second-to-last sentence in item 3(b) of the Summary of Facts and Representations in the Notice, ''majority ownership on the UCF Board'' should read ''majority membership on the UCF Board.'' The Department notes this correction.

The Applicant also commented that item 11 of the Summary of Facts and Representations in the Notice could be read to imply that UCF represented it did not comply with the exemption audit requirement of FAN 2003–03E (the FAN). UCF, in its comment, maintained its position that it did indeed comply with the exemption audit requirement of the FAN, but it acknowledges the Department's view that it did not comply and has requested retroactive relief to February 15, 2003 for that reason.

Finally, the Applicant requested three changes to the Notice with respect to the prospective relief provided in Section III so that the conditions and definitions would be made consistent with the 2005 amendment to PTE 84–14.[11] First, the Applicant requested that the Department delete the ''one-year look-back rule'' that makes the exemption unavailable to a party in interest if it had exercised the power of appointment over UCF within the one-year period preceding the transaction, and clarifying that the power of appointment refers only to the power to appoint UCF as manager of the assets used in the transaction. The Department concurs with this suggestion and has added Section III(d) for prospective transactions while deleting the requirement that such prospective transactions satisfy the condition contained in Section I(b). Second, the Applicant requested that Section IV(a) exclude from the definition of an ''affiliate'' those partnerships in which the person has less than a 10% interest (rather than 5%). The Department concurs with this suggestion and made the requested change to the Notice by

[11] 70 FR 49305, August 23, 2005.

adding Section IV(p). Third, the Applicant requested that Section IV(j) be revised for prospective transactions with respect to the definition of ''related'' by changing the percentage of ownership in certain entities. The Department has determined not to make this requested modification to the final exemption. In this regard, the Department notes that the modification requested would conflict with other limitations contained in section I(h) in a number of instances.[12]

For Further Information, Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546 (this is not a toll-free number).

Barclays Global Investors, N.A. and its affiliates and successors (BGI) and Barclays Capital Inc. and its affiliates and successors (BarCap) (collectively Applicants); Located in San Francisco, CA, and New York, NY.

[Prohibited Transaction Exemption 09–25; Application No. D–11508.]

Exemption

Section I—Temporary Exemption for Securities Lending Transactions Involving Index and Model-Driven Funds That Are Based on BarCap-Lehman Indices

For the period from September 22, 2008, through the earlier of (i) the effective date of an individual exemption granting permanent relief for the following transactions or (ii) one year from September 1, 2009 (the Relief Period), the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lending of securities carried out on behalf of Client Plans in reliance on Prohibited Transaction Exemption (PTE) 2002–46,[13] where the applicable Index or Model-Driven Fund managed by BGI meets the definition of an ''Index Fund'' or a ''Model-Driven Fund'' as set forth in Section III of PTE 2002–46 but for the fact that the underlying index is a BarCap-Lehman Index, provided that all of the other conditions of PTE 2002–46 and the conditions set forth in Section IV of this exemption are met.

Section II—Temporary Exemption for Transactions Involving Exchange-Traded Funds That Are Index and Model-Driven Funds Based on BarCap-Lehman Indices

Effective for the Relief Period, the restrictions of section 406(a) and (b) of the Act, section 8477(c)(2) of FERSA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to transactions carried out on behalf of Client Plans in reliance upon Prohibited Transaction Exemption (PTE) 2008–01,[14] where the applicable Index or Model-Driven Fund would meet the definition of an ''Index Fund'' or a ''Model-Driven Fund'' as set forth in Section V of PTE 2008–01 but for the fact that the underlying index is a BarCap-Lehman Index, provided that all of the other conditions of PTE 2008–01 and the conditions set forth in Section IV of this exemption are met.

Section III—Temporary Exemption for Principal Transactions With the BarCap-Lehman Broker-Dealer

Effective for the Relief Period, the restrictions of section 406(a) and 406(b)(1) and (2) of the Act, section 8477(c)(2)(A) and (B) of FERSA, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase or sale of fixed income securities between BGI on behalf of Client Plans and the BarCap-Lehman Broker-Dealer (Covered Principal Transactions) provided that the conditions set forth in Section V are met.

Section IV—Conditions Applicable to Sections I and II

(a) Each BarCap-Lehman Index is a published Index widely used in the market by independent institutional investors other than pursuant to an investment management or advisory relationship with BGI and is prepared or applied in the same manner for non-affiliated customers as for BGI.

(b) Prior to the use of a BarCap-Lehman Index in connection with the exemption and on an annual basis thereafter (but in no event prior to the date that is 90 days following May 6, 2009), BGI will provide BarCap with a list of BarCap Lehman Indices proposed to be used by BGI in connection with the exemption. BarCap will certify to BGI whether, in its reasonable judgment, each such index is widely used in the market. In making this determination, BarCap shall take into consideration factors such as (i) publication by Bloomberg, or a similar institution involved in the dissemination of financial information, (ii) hits on relevant Web sites including LehmanLive (or any successor Web site maintained by BarCap or its affiliate(s)) and Bloomberg.com (or similar Web site), and (iii) delivery of index information to clients by means other than through Web site access.

(c) Any fees charged for the use of the BarCap-Lehman Index are paid by BGI and not Client Plans.

(d) Information barriers are in place throughout the Relief Period between BGI and BarCap such that BGI is not provided access to information regarding the rules, decisions and data underlying the BarCap-Lehman Indices before such information is provided to users of such Indices who are independent of BarCap and such rules, decisions and data are determined objectively without regard to BGI's use of such BarCap-Lehman Indices.

(e) At the end of the Relief Period, a Qualified Independent Reviewer, as defined in Section VII(n), shall issue a written report (the Compliance Report), following its review of relevant BarCap-Lehman Indices and the underlying rules, certifying to each of the following:

(i) Each BarCap-Lehman Index was operated in accordance with objective rules, in the ordinary course of business as would be conducted between unaffiliated parties;

(ii) No manipulation of any BarCap-Lehman Index for the purpose of benefiting BGI, BarCap, or their affiliates occurred;

(iii) In the event that any rule change occurred in connection with the rules underlying any BarCap-Lehman Index, such rule change was not made for the purpose of benefiting BGI, BarCap, or their affiliates;

(iv) Based on a review of the factors cited in condition (b) above, each BarCap-Lehman Index was widely used in the market during the Relief Period;

(v) Based on the result of the Qualified Independent Reviewer's factual inquiries to the Applicants, condition (d) above was met; and

(vi) Based on the Qualified Independent Reviewer's review of paid bills or invoices, condition (c) above was met with respect to the fee or fees paid in connection with each transaction.

The Compliance Report shall be issued no later than 90 days following the end of the Relief Period describing the steps performed during the course of the Qualified Independent Reviewer's review, the level of compliance with conditions (e)(i) through (vi), and any specific instances of non-compliance.

[12] The Department notes that it is currently considering an amendment to PTE 96–23. The Department has under consideration an amendment to the ''related to'' definition in section IV(d) of PTE 96–23. To the extent the Department adopts such changes, the Department would consider making similar changes to this exemption at such time.

[13] 67 FR 59569, September 23, 2002.

[14] 73 FR 3274, January 17, 2008.

The Compliance Report shall be included in the records maintained by BGI pursuant to Section VI of this exemption, and BGI shall notify the independent fiduciary(ies) of each Client Plan, as part of its regular disclosure with respect to the applicable Fund(s), that the Compliance Report is available for their review.

(f) The Index or Model-Driven Funds described in Sections I and II meet the definition of Index Fund or Model-Driven Fund in Sections VII(k) or (l) of this exemption.

Section V—Conditions Applicable to Section III

(a) BGI exercises discretionary authority or control or renders investment advice with respect to the Client Plan assets involved in the Covered Principal Transaction solely in connection with an Index Fund or Model-Driven Fund in which Client Plans invest.[15]

(b) Each Covered Principal Transaction occurs as a direct result of a Triggering Event, as defined in Section VII(o), and is executed no later than the close of the third business day following such Triggering Event.

(c) Each Covered Principal Transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security.

(d) Each Covered Principal Transaction is on terms that BGI reasonably determines to be as favorable or more favorable to the Client Plan than the terms of an arm's length transaction with an unaffiliated counterparty would have been.

(e) Each Covered Principal Transaction is executed either:

(i) Through an automated routing system reasonably designed to ensure execution at the best available net price to the Client Plan for the number of securities to be purchased or sold in the Covered Principal Transaction; or

(ii) At a net price to the Client Plan for the number of securities to be purchased or sold in the Covered Principal Transaction which is as favorable or more favorable to the Client Plan as the prices at which at least two independent Approved Counterparties, who are ready and willing to trade the relevant security, offer to purchase or sell such security.

(f) The Covered Principal Transaction does not involve any security issued by Barclays PLC.

(g) At the end of the Relief Period, a Qualified Independent Reviewer shall issue a Compliance Report certifying to each of the following:

(i) Based on a review of execution policies and procedures during the Relief Period and a sample of Covered Principal Transactions, that the policies and execution procedures used in connection with Covered Principal Transactions were reasonably designed to obtain best execution for the securities to be purchased or sold in the Covered Principal Transaction; and

(ii) Each sampled Covered Principal Transaction occurred in accordance with conditions (a), (b), (c) and (e) above.

The Compliance Report shall be issued no later than 90 days following the end of the Relief Period describing the steps performed during the course of the Qualified Independent Reviewer's review, the level of compliance with conditions (g)(i) and (ii), and any specific instances of non-compliance. The Compliance Report shall be included in the records maintained by BGI pursuant to Section VI of this exemption, and BGI shall notify the independent fiduciary(ies) of each Client Plan, as part of its regular disclosure with respect to the applicable Fund(s), that the Compliance Report is available for their review.

(h) In the case of any Covered Principal Transaction in connection with an Index Fund or a Model-Driven Fund with respect to which the underlying Index is a BarCap-Lehman Index, each of conditions (a) through (f) set forth in Section IV above is met.

Section VI—Recordkeeping Conditions Applicable to Sections I, II and III

(a) BGI maintains, or causes to be maintained, for a period of six (6) years following the end of the Relief Period the records necessary to enable the persons described in paragraph (b) Below to determine whether the conditions of the exemption have been met, including the Compliance Reports described in Sections IV(e) and V(g), and records which identify with respect to the Covered Principal Transactions:

(i) On a Fund by Fund basis, the specific Triggering Events which result in the creation of the index or model prescribed output describing the characteristics of the securities to be traded;[16]

(ii) On a Fund by Fund basis, the index or model prescribed output which described the characteristics of the securities to be traded in detail sufficient to allow an independent plan fiduciary or the Qualified Independent Reviewer to verify that each of the above decisions for the Fund was made in response to specific Triggering Events; and

(iii) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day, the identity of the counterparty, the prices offered by the Approved Counterparties, if relevant, and which of those trades resulted from Triggering Events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, the Qualified Independent Reviewer, or other persons identified below in paragraph (b) of this Section, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of BGI, the records are lost or destroyed prior to the end of the six-year period; and no party in interest other than BGI and its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in Section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer;

(D) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such Client Plan participant or beneficiary; and

(E) The Qualified Independent Reviewer.

(2) None of the persons described above in subparagraphs (B)–(E) of paragraph (b)(1) are authorized to examine the trade secrets of BGI or its affiliates or commercial or financial information that is privileged or confidential.

[15] This does not preclude, in the case of a BGI Plan that is a defined contribution plan under which participants direct the investment of their accounts among various investment options, the discretionary authority to select and offer investment options under the plan.

[16] Characteristics of the securities used in rebalancing a fixed income index would include changes in (a) amount of securities, (b) duration, (c) yield curve, and (d) convexity.

(3) Should BGI refuse to disclose information on the basis that such information is exempt from disclosure, BGI shall, by the close of the thirtieth (30th) day following the request, provide written notice advising that person of the reason for the refusal and that the Department may request such information.

Section VII—Definitions

(a) *Approved Counterparty:* A dealer that (x) is either (i) registered in accordance with section 15(b) of the Exchange Act or (ii) exempt from the requirement to register as a dealer under the Exchange Act because it is a bank that buys and sells government securities (as such terms are defined in the Exchange Act) and (y) meets the credit and execution standards of BGI as described in paragraph 20 of the summary of facts and representations of the notice of proposed exemption (74 FR 20981, May 6, 2009).

(b) *Barclays:* Barclays PLC and its direct and indirect subsidiaries.

(c) *BarCap:* Barclays Capital Inc. and its successors.

(d) *BarCap-Lehman Broker-Dealer:* BarCap's U.S. broker-dealer business, including the broker-dealer business acquired by BarCap from Lehman on September 22, 2008.

(e) *BarCap-Lehman Index:* A generally accepted standardized securities Index created by Lehman prior to the closing of the Asset Purchase Agreement on September 22, 2008, and maintained by its successor, BarCap.

(f) *BGI:* Barclays Global Investors, N.A., its investment advisory affiliates and their respective successors.

(g) *BGI Plan:* A Plan maintained by BGI or an affiliate for the benefit of its own employees.

(h) *Client Plan:* An employee benefit plan subject to the Act, FERSA and/or the Code, whose assets are managed by or which is advised by BGI, or a BGI-managed fund or separate account in which assets of such plans are invested.

(i) *Exchange Act:* The Securities Exchange Act of 1934, as amended.

(j) *Index:* A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients;

(B) A publisher of financial news or information; or

(C) A public stock exchange or association of securities dealers; and

(2) The index is either (i) created and maintained by an organization independent of Barclays or (ii) a BarCap-Lehman Index; and

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of BGI.

(k) *Index Fund:* Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by BGI in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an Index by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which either (i) BGI or its affiliate does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold or (ii) the underlying Index is a BarCap-Lehman Index;

(3) That contains ''plan assets'' subject to the Act; and

(4) That involves no agreement, arrangement or understanding regarding the design or operation of the Fund which is intended to benefit BGI its affiliate or any party in which BGI or its affiliate may have an interest.[17]

(l) *Model-Driven Fund:* Any investment fund, account or portfolio sponsored, maintained, trusteed or managed by BGI in which one or more investors invest and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria to transform an Index using either (i) independent third-party data not within the control of BGI or an affiliate or (ii) data provided by the BarCap-Lehman Broker-Dealer that is commercially available on a widespread basis to unaffiliated end users such as mutual funds and collective investment funds on the same terms and conditions;

(2) Which contains ''plan assets'' subject to the Act; and

(3) That involves no agreement, arrangement or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit BGI or its affiliate or any party in which BGI or its affiliate may have an interest.[18]

(m) *Lehman:* Lehman Brothers Holdings Inc. and, as the context requires, its subsidiaries and affiliates prior to September 15, 2008.

(n) *Qualified Independent Reviewer:* A third party appointed by BGI that is independent of Barclays and its affiliates and has extensive experience in reviewing and/or auditing transactions and procedures involving assets of plans subject to the Act, FERSA and/or the Code for the purpose of confirming that the applicable transactions or procedures serve the best interests of such plans.

(o) *Triggering Event:* Any of the following events in connection with an Index Fund or a Model-Driven Fund (together, ''Funds''):

(1) A change in the composition or weighting of the Index underlying a Fund by either (i) the independent organization creating and maintaining the Index or (ii) in the case of a BarCap-Lehman Index, by the BarCap-Lehman Broker-Dealer. In the case of a change described in clause (ii) of the preceding sentence, the change is uniformly applied to all customers using the Index, including non-affiliated customers, and is not adopted for the purpose of benefiting BGI.

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each Client Plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund or BGI has otherwise disclosed to the independent fiduciary the parameters for determining a material amount of net change, including any amount of discretion retained by the BGI that may affect such net change; and

(B) Investments or withdrawals as a result of BGI's discretion to invest or withdraw assets of a BGI Plan, other than a BGI Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including the applicable Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

[17] This requirement does not preclude BGI's payment of fees to BarCap for use of the Indices.

[18] This requirement does not preclude BGI's payment of fees to BarCap for use of the Indices or data.

(B) Stock attributable to dividends on portfolio securities; provided that such material amount has been identified in advance as a specified amount relating to such Fund and disclosed in writing as a ''triggering event'' to an independent fiduciary of each Client Plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund, or BGI has otherwise disclosed to the independent fiduciary the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the BGI that may affect such net change.

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have been disclosed in writing to an independent fiduciary of each Client Plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a ''triggering event'' for such Fund; or

(5) A change in the composition or weighting of a portfolio for an Index or Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the Index used by the Fund.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 6, 2009 at 74 FR 20981 (the Notice).

Effective Date: The exemption is effective September 22, 2008.

Written Comments

The Department received one comment with respect to the Notice, which was filed by the Applicants. The Applicants' comment concerns Section V(d) of the Notice, which provided that:

> [E]ach Covered Principal Transaction is on terms that BGI reasonably determines to be more favorable to the Client Plan than the terms of an arm's length transaction with an unaffiliated counterparty would have been.

The Applicants note that the Notice provided another standard for Covered Principal Transactions, relating to price. That condition, Section V(e), provides that:

> [E]ach Covered Principal Transaction is executed either:
>
> (i) Through an automated routing system reasonably designed to ensure execution at the best available net price to the Client Plan for the number of securities to be purchased or sold in the Covered Principal Transaction; or
>
> (ii) at a net price to the Client Plan for the number of securities to be purchased or sold in the Covered Principal Transaction which is as favorable or more favorable to the Client Plan as the prices at which at least two independent Approved Counterparties, who are ready and willing to trade the relevant security, offer to purchase or sell such security.

In this regard, BGI represents that it is not currently executing transactions through an automated routing system. With respect to Covered Principal Transactions involving prices quoted by at least two independent Approved Counterparties (subsection (ii) above), BGI represents as follows: BGI's fixed income policies and procedures include consideration of various factors (of which one—price—is quantifiable) that may go into the selection of a counterparty for execution. In the context of Covered Principal Transactions, each counterparty with whom BGI would trade through a trading platform (for example, Tradeweb) is already a BGI approved counterparty that has been subject to internal approvals, including approval by BGI's credit group. For the execution of all Covered Principal Transactions made using the platform, the predominant (though not exclusive) factor used when comparing the terms offered by one of those Approved Counterparties is price.

Accordingly, because in BGI's view price is the only quantifiable factor and all the Approved Counterparties have been subject to prior internal approval, BGI is concerned that it may be difficult to prove that a Covered Principal Transaction is on terms ''more favorable to the Client Plan than the terms of an arm's length transaction with an unaffiliated counterparty'' under circumstances in which the price is ''as favorable or more favorable'' than the prices offered by two independent Approved Counterparties. BGI's concern also relates to the language governing transactions executed through an automated routing system (subsection (i) above), in the event that future trades are executed in that manner. The requirement that the trade be executed at ''best available net price'' would leave room for the possibility that two or more trading opportunities would exist at the same price, each of which could represent the ''best available net price.'' In such a case, BGI believes it may be difficult to demonstrate compliance with the requirement in Section V(d) that the terms of the transaction be ''more favorable to the Client Plan than the terms of an arm's length transaction with an unaffiliated counterparty.''

To address its concerns, BGI requests that the required standard for the overall terms of the Covered Principal Transaction (*i.e.,* Section V(d)) be conformed to the same required standard for the specific term of price of the Covered Principal Transaction. Therefore, BGI requests that Section V(d) be revised as follows:

> Each Covered Principal Transaction is on terms that BGI reasonably determines to be as favorable or more favorable to the Client Plan than the terms of an arm's length transaction with an unaffiliated counterparty would have been.

Upon consideration of BGI's comment, the Department has determined to make the change requested by BGI.

For Further Information Contact: Karen E. Lloyd of the Department, 202–693–8554. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of August, 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security, Administration, U.S. Department of Labor.

[FR Doc. E9–20724 Filed 8–31–09; 8:45 am]

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Federal Register

Vol. 74, No. 168

Tuesday, September 1, 2009

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Laws	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

45093–45304 1

CFR PARTS AFFECTED DURING SEPTEMBER

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.

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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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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TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 2009

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
September 1	Sep 16	Sep 22	Oct 1	Oct 6	Oct 16	Nov 2	Nov 30
September 2	Sep 17	Sep 23	Oct 2	Oct 7	Oct 19	Nov 2	Dec 1
September 3	Sep 18	Sep 24	Oct 5	Oct 8	Oct 19	Nov 2	Dec 2
September 4	Sep 21	Sep 25	Oct 5	Oct 9	Oct 19	Nov 3	Dec 3
September 8	Sep 23	Sep 29	Oct 8	Oct 13	Oct 23	Nov 9	Dec 7
September 9	Sep 24	Sep 30	Oct 9	Oct 14	Oct 26	Nov 9	Dec 8
September 10	Sep 25	Oct 1	Oct 13	Oct 15	Oct 26	Nov 9	Dec 9
September 11	Sep 28	Oct 2	Oct 13	Oct 16	Oct 26	Nov 10	Dec 10
September 14	Sep 29	Oct 5	Oct 14	Oct 19	Oct 29	Nov 13	Dec 14
September 15	Sep 30	Oct 6	Oct 15	Oct 20	Oct 30	Nov 16	Dec 14
September 16	Oct 1	Oct 7	Oct 16	Oct 21	Nov 2	Nov 16	Dec 15
September 17	Oct 2	Oct 8	Oct 19	Oct 22	Nov 2	Nov 16	Dec 16
September 18	Oct 5	Oct 9	Oct 19	Oct 23	Nov 2	Nov 17	Dec 17
September 21	Oct 6	Oct 13	Oct 21	Oct 26	Nov 5	Nov 20	Dec 21
September 22	Oct 7	Oct 13	Oct 22	Oct 27	Nov 6	Nov 23	Dec 21
September 23	Oct 8	Oct 14	Oct 23	Oct 28	Nov 9	Nov 23	Dec 22
September 24	Oct 9	Oct 15	Oct 26	Oct 29	Nov 9	Nov 23	Dec 23
September 25	Oct 13	Oct 16	Oct 26	Oct 30	Nov 9	Nov 24	Dec 24
September 28	Oct 13	Oct 19	Oct 28	Nov 2	Nov 12	Nov 27	Dec 28
September 29	Oct 14	Oct 20	Oct 29	Nov 3	Nov 13	Nov 30	Dec 28
September 30	Oct 15	Oct 21	Oct 30	Nov 4	Nov 16	Nov 30	Dec 29