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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Proclamation 8409 of September 3, 2009

The President

National Wilderness Month, 2009

By the President of the United States of America

A Proclamation

The American wilderness has inspired wonder and imagination for centuries and is an irreplaceable part of our Nation's heritage. Even before the birth of the United States, visitors from near and far were struck by its splendor and purity. The unaltered American landscape stood apart from any other in the world. During the years of westward expansion, the wilderness frontier became synonymous with pioneer values of steadfastness and rugged independence. This month, we celebrate this history and renew our commitment to preserving the American wilderness for future generations.

Forty-five years ago, the United States achieved a landmark success in protecting these magnificent wild spaces. The Congress passed and President Lyndon B. Johnson signed the Wilderness Act, which sought to secure "for the American people of present and future generations the benefits of an enduring resource of wilderness." The Act has been widely recognized as one of our Nation's most important conservation laws. This law and the National Wilderness Preservation System it established have served as a model for wilderness protection laws in many of our States and in countries around the world.

The vision and structure established in the Wilderness Act continue to receive broad support. This pioneering law created a framework for bringing Federal public lands under additional protection. Over the past 45 years, the Congress has enacted numerous laws extending wilderness protection to vast swaths of public lands. These laws have enjoyed bipartisan support. Ranchers and anglers, small-business owners and conservationists, and Americans of diverse backgrounds have come together to preserve many of our Nation's most cherished public spaces.

My Administration has already demonstrated a commitment to protecting our wilderness heritage. On March 30, 2009, I signed the Omnibus Public Land Management Act of 2009, which established the most recent additions to our Wilderness System. As my Administration continues to prioritize wilderness protection, we will work closely with the Congress, organizations, and private citizens to ensure that all stakeholders can make their voices heard. United by a common purpose of preserving our precious natural spaces and our wilderness heritage, we will ensure that future generations inherit the unique gift of knowing nature's peace.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 2009 as National Wilderness Month. I call upon all Americans to visit and enjoy our wilderness areas, learn more about our wilderness heritage, and explore what can be done to protect and preserve these precious national treasures.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of September, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a vertical line through it, and a horizontal line extending to the right.

[FR Doc. E9-21701
Filed 9-4-09; 8:45 am]
Billing code 3195-W9-P

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number EERE-2006-STD-0125]

RIN 1904-AB58

Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines

Correction

In rule document E9-19392 beginning on page 44914 in the issue of Monday, August 31, 2009, make the following correction:

1. On page 44914, in the first column, under the **DATES** section, in the fourth line, "August 31, 2011" should read "August 31, 2012".

§431.296 [Corrected]

2. On page 44967, in § 431.296, in the third and fourth lines, "[Insert date 3 years from the date of publication of this final rule]" should read "August 31, 2012".

[FR Doc. Z9-19392 Filed 9-4-09; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0787; Directorate Identifier 2009-NM-090-AD; Amendment 39-16015; AD 2009-02-06 R1]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are revising an existing airworthiness directive (AD) that applies to certain Boeing Model 737-300, -400, and -500 series airplanes. That AD currently requires repetitive high frequency eddy current inspections for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringers S-20 and S-21, on both the left and right sides of the airplane, and related investigative and corrective actions if necessary. This new AD clarifies certain compliance requirements. This AD results from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing. We are issuing this AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

DATES: This AD is effective September 23, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 15, 2009 (74 FR 10469, March 11, 2009).

We must receive comments on this AD by November 9, 2009.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1, fax 206-766-5680; e-mail

me.boecom@boeing.com; Internet <https://www.myboeingfleet.com>.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

On January 9, 2009, we issued AD 2009-02-06, amendment 39-15796 (74 FR 10469, March 11, 2009), for certain Boeing Model 737-300, -400, and -500 series airplanes. That AD requires repetitive high frequency eddy current inspections for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringers S-20 and S-21, on both the left and right sides of the airplane, and related investigative and corrective actions if necessary. That AD resulted from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing. We issued that AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2009-02-06, January 9, 2009, amendment 39-15796 (74 FR 10469, March 11, 2009), we have determined that we need to clarify certain compliance requirements in the existing AD, as follows:

- We have inserted a new paragraph (g)(1) in this AD to state that while the service bulletin specifies compliance times in terms of the “date on this service bulletin,” this AD requires compliance within the specified compliance time “after the effective date of this AD.” This paragraph appeared in the original NPRM, but was inadvertently removed from AD 2009–02–06.

- We removed the reference to the “Accomplishment Instructions” of Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007, from paragraph (g) of this AD. Paragraphs (g)(1) through (g)(4) of this AD do not all refer to text located in the service bulletin Accomplishment Instructions.

- We added a reference to the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007, to paragraph (i) of this AD to provide the locations of “Part 3” and “Part 5,” as referenced in that paragraph of the AD.

Changes to Existing AD

This AD retains all the requirements of AD 2009–02–06. Since AD 2009–02–06 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2009–02–06	Corresponding requirement in this AD
Paragraph (d)	Paragraph (e).
Paragraph (e)	Paragraph (f).
Paragraph (f)	Paragraph (g).
Paragraph (g)	Paragraph (h).
Paragraph (h)	Paragraph (i).
Paragraph (i)	Paragraph (j).
Paragraph (j)	Paragraph (k).

FAA’s Determination and Requirements of This AD

We are issuing this AD because the unsafe condition described previously is likely to exist or develop on other products of these same type designs that could be registered in the United States in the future. This AD revises AD 2009–02–06. This AD retains the requirements of the existing AD and clarifies certain compliance requirements. Since no new airplanes are affected by this AD and there are no new required actions, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2009–0787; Directorate Identifier 2009–NM–090–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15796 (74 FR 10469, March 11, 2009) and adding the following new AD:

2009–02–06 R1 Boeing: Amendment 39–16015. Docket No. FAA–2009–0787; Directorate Identifier 2009–NM–090–AD.

Effective Date

(a) This airworthiness directive (AD) is effective September 23, 2009.

Affected ADs

(b) This AD revises AD 2009–02–06.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing. We are issuing this AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization 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 2009-02-06 With Clarifications of Compliance Requirements

Service Bulletin Reference Paragraph

(g) The term "service bulletin," as used in this AD, means Boeing Alert Service Bulletin 737-53A1279, dated December 18, 2007.

(1) Where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) The "Condition" column of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-53A1279, dated December 18, 2007, refers to total flight cycles "at the date given on this service bulletin." However, this AD applies to the airplanes with the specified total flight cycles as of April 15, 2009 (the effective date of AD 2009-02-06).

(3) Where the service bulletin specifies to contact Boeing for instructions for removing damage and repairing cracking: Before further flight, remove the damage or repair the cracking using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(4) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include that requirement.

Inspections, Related Investigative Actions, and Corrective Actions

(h) At the applicable time specified in paragraph 1.E., "Compliance," of the service bulletin, except as specified by paragraph (g)(1) of this AD: Do a high frequency eddy current (HFEC) surface inspection or an HFEC hole/edge inspection for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringer S-20 and S-21; and do all applicable related investigative and corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of the service bulletin, except as specified by paragraphs (g)(3) and (g)(4) of this AD. Do all applicable related investigative and corrective actions before further flight. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E., "Compliance," of the service bulletin.

Terminating Action

(i) Doing the repair in Part 3 or the preventative modification in Part 5 of the Accomplishment Instructions of the service bulletin terminates the repetitive inspection requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590. Or,

e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin 737-53A1279, dated December 18, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 737-53A1279, dated December 18, 2007, on April 15, 2009 (74 FR 10469, March 11, 2009).

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

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

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

Issued in Renton, Washington, on August 26, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-21311 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2009-0362; Airspace Docket No. 09-ASW-10]

Establishment of Class D Airspace; Arlington, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Arlington, TX. Establishment of an air traffic control tower at Arlington Municipal Airport has made this action necessary for the safety and management of Instrument Flight Rule (IFR) operations at Arlington Municipal Airport.

DATES: 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D airspace at Arlington Municipal Airport, Arlington, TX. (74 FR 30022, Docket No. FAA-2009-0362). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class D airspace extending upward from the surface up to but not including 2,000 feet MSL for the safety and management of IFR operations at Arlington Municipal Airport, Arlington, TX.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASW TX D Arlington, TX [New]

Arlington Municipal Airport, TX (Lat. 32°39’50” N., long. 97°05’39” W.)

That airspace extending upward from the surface, to but not including 2,000 feet MSL within a 4-mile radius of Arlington Municipal Airport, excluding the portion east of a line between lat. 32°43’48” N.; long. 97°05’06” W.; and lat. 32°38’10” N.; long. 97°3’26” W., and lat. 32°36’16” N.; long. 97°03’31” W., and excluding that airspace within the Dallas/Fort Worth, TX, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, Texas, on August 25, 2009.

Ronnie L. Uhlenhaker,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–21224 Filed 9–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0363; Airspace Docket No. 09–ASW–11]

Establishment of Class D Airspace; Grand Prairie, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class D airspace at Grand Prairie Municipal Airport, Grand Prairie, TX. (74 FR 30023, Docket No. FAA–2009–0363). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class D airspace extending upward from the surface up to but not including 2,000 feet MSL for IFR operations at Grand Prairie Municipal Airport, Grand Prairie, TX, for the safety and management of IFR operations.

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

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

controlled airspace at Grand Prairie Municipal Airport, Grand Prairie, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASW TX D Grand Prairie, TX [New]

Grand Prairie Municipal Airport, TX
(Lat. 32°41'55.6" N., long. 97°02'48.9" W.)

That airspace extending upward from the surface, to but not including 2,000 feet MSL within a 3.8-mile radius of Grand Prairie Municipal Airport, excluding the portion west of a line between lat. 32°45'00" N.; long. 97°05'28" W., and lat. 32°38'10" N.; long. 97°3'26" W., and excluding that portion north of a line between lat. 32°45'00" N.; long. 97°05'28" W.; and lat. 32°45'00" N.; long. 97°00'10" W., and excluding that airspace within the Dallas/Fort Worth, TX Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, Texas, on August 25, 2009.

Ronnie L. Uhlenhaker,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. E9–21269 Filed 9–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0191; Airspace
Docket No. 09–ACE–4]

Establishment of Class E Airspace; Neligh, NE

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: 0901 UTC, December 17, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On June 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Neligh, NE, adding controlled airspace extending upward from 700 feet above the surface, at Antelope County Airport, Neligh, NE. (74 FR 30024, Docket No. FAA–2009–0191). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending

upward from 700 feet above the surface at Antelope County Airport, Neligh, NE, for the safety and management of IFR operations at the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace

Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

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

* * * * *

ACE NE E5 Neligh, NE [New]

Antelope County Airport, NE
(Lat. 42°06'44" N., long. 98°02'23" W.)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Antelope County Airport and within 3.3 miles either side of the 193° bearing from the airport extending from the 7.7-mile radius to 10.2 miles south of the airport, and within 2.2 miles either side of the 013° bearing from the airport extending from the 7.7-mile radius to 10.1 miles north of the airport.

* * * * *

Issued in Fort Worth, Texas, on August 25, 2009.

Ronnie L. Uhlenhaker,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9-21268 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2008-1114; Airspace Docket No. 08-AGL-17]

RIN 2120-AA66

Establishment of Low Altitude Area Navigation Route (T-Route); Rockford, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a low altitude Area Navigation (RNAV) route, designated T-265, in the Chicago/Rockford International Airport, IL, terminal area. This route allows for more effective utilization of airspace and enhances the management of aircraft operations in the Chicago/Rockford International Airport, IL, terminal area west of Chicago, IL.

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations

Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 24, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish low altitude area navigation route T-265 (73 FR 79035). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Two comments were received in response to the NPRM.

Discussion of Comments

One commenter suggested the FAA establish a similar T-route between Portland, OR, and Seattle, WA. The commenter based his discussion on the icing conditions pilots experience while flying in that area during the winter months, as they comply with published minimum en-route altitudes between the cities. The comment received provided no substantive information relative to the proposed T-265 RNAV route and falls outside the scope of this rulemaking action. However, the commenter's remarks will be shared with the FAA Western Service Area for their consideration in future airway actions, as appropriate.

The second commenter opposed the proposed route, stating it was too far west of Chicago to be very helpful to general aviation aircraft. The commenter further stated general aviation needed T-routes to help skirt by or through controlled airspace to save air-miles.

T-265 was proposed to establish an RNAV route to efficiently manage transient air traffic through the Chicago/Rockford International Airport approach control airspace and remain clear of the Chicago Class B high density airspace area. As a practical matter, the Chicago/Rockford approach control air traffic controllers cannot route air traffic across the northwest corner of the Chicago Class B as this would impact the JANESVILLE FIVE instrument approach procedure into Chicago O'Hare International Airport. Further complicating use of this airspace are the planned actions underway to establish a system of arrival and departure instrument procedures to and from the west into Chicago O'Hare, the second busiest airport in the national airspace system. As a result of the high volume of air traffic operations and the existing and planned instrument procedures supporting Chicago O'Hare International Airport arrivals and departures, transient instrument flight rules aircraft

traveling north or south around the Chicago Class B high density airspace area have to file either east of Chicago over Lake Michigan or west of Chicago through the Chicago/Rockford International Airport approach control airspace. For aircraft opting to fly west of Chicago, the proposed T-265 route is the same route of flight currently being issued by Chicago/Rockford approach control air traffic controllers to re-route airborne aircraft through their controlled airspace around the Chicago Class B airspace area.

The FAA has determined that establishing T-265 will maximize the efficient use of airspace west of Chicago, and save flying miles for general aviation pilots transiting around the Chicago Class B airspace area.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing route T-265 in the Chicago/Rockford International Airport, IL, terminal area. The route is intended to be used by GNSS-equipped aircraft that are capable of filing flight plane equipment code "/G." The route will be depicted in blue on the appropriate IFR en route low altitude charts. The FAA is taking this action to enhance safety and to facilitate the flexible and efficient use of the navigable airspace for en route IFR operations transiting through the Chicago/Rockford International terminal airspace area west of Chicago, IL.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV routes listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a low altitude Area Navigation route (T-Route) at Rockford, IL.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T-265 KELS, IL to VEENA, WI [New]

KELS, IL WP

(Lat. 41°26'20" N., long. 88°59'29" W.)

SIMMN, IL WP

(Lat. 41°58'50" N., long. 88°52'42" W.)

BULLZ, IL WP

(Lat. 42°27'27" N., long. 88°46'17" W.)

VEENA, WI WP

(Lat. 42°42'18" N., long. 88°18'14" W.)

* * * * *

Issued in Washington, DC, on September 1, 2009.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

[FR Doc. E9–21432 Filed 9–4–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 740 and 746

[Docket No. 090414648–9652–01]

RIN 0694–AE60

Cuba: Revisions to Gift Parcel and Baggage Restrictions, Creation of License Exception for Donated Consumer Communications Devices and Expansion of Licensing Policy Regarding Telecommunications

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule revises two existing License Exceptions concerning exports and reexports of gift parcels to Cuba and of personal baggage taken by individuals leaving the United States for travel to Cuba. It also creates a new License Exception authorizing the export and reexport to Cuba of certain donated consumer communications devices, including certain computers and software, mobile phones, and satellite receivers. Finally, this rule revises the scope of existing licensing policy regarding certain telecommunications links including satellite radio and satellite television services. These actions are among those directed by the President on April 13, 2009 to enhance the free flow of information to and from Cuba and to promote contacts between Americans and their relatives who reside in Cuba as a means of encouraging positive change in Cuba and are consistent with the ongoing support the United States has provided to individuals and nongovernmental organizations that support democracy-building efforts in Cuba. These actions do not suspend or terminate the United States embargo of Cuba.

DATES: *Effective Date:* This rule is effective September 3, 2009.

ADDRESSES: Although there is no comment period for this final rule, BIS welcomes any comments from the public on the amendments made by this rule. Comments may be submitted by e-mail directly to BIS at publiccomments@bis.doc.gov (please refer to RIN 0694–AE60 in the subject line); or by delivery to Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Comments on the information collection contained in this rule should also be sent to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to jseehra@omb.eop.gov, or by fax to (202) 395–7285. Refer to RIN 0694–AE60 in all comments.

FOR FURTHER INFORMATION CONTACT:

Anthony Christino, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance at (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Background

The United States maintains a comprehensive embargo on trade with Cuba. Pursuant to that embargo, all items that are subject to the Export Administration Regulations (EAR) require a license for export or reexport to Cuba unless authorized by a License Exception. BIS administers export and reexport restrictions on Cuba consistent with the goals of the embargo and with relevant legislation, including the Cuban Liberty and Democratic Solidarity Act of 1996 (LIBERTAD). Accordingly, BIS may issue specific or general authorizations for limited types of transactions that support the goals of United States policy while the embargo remains in effect.

On April 13, 2009, the President directed the Secretary of the Treasury and the Secretary of Commerce, in consultation with the Secretary of State, to take certain actions to enhance the free flow of information to and from Cuba and to promote contacts between Americans and their relatives who reside in Cuba as a means of encouraging positive change in Cuba. In doing so, the President noted the United States policy of promoting democracy and human rights in Cuba and stated that “measures that decrease dependency of the Cuban people on the Castro regime and that promote contact between Cuban-Americans and their relatives in Cuba are means to encourage positive change in Cuba.” The policy of promoting human rights and democracy in Cuba has long been reflected in legislation. LIBERTAD’s

purpose, in part, is to help the Cuban people regain their freedom and prosperity. In addition, even before LIBERTAD, the Cuban Democracy Act of 1992 reflected Congressional support for assistance to encourage democracy in Cuba, stating that the U.S. Government may provide assistance, through appropriate nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.

This rule implements the portions of the President's directive that relate to the regulations of the Department of Commerce by changing the existing License Exceptions "Gift Parcels and Humanitarian Donations (GFT)" and "Baggage (BAG)," creating a new License Exception "Consumer Communications Devices (CCD)" and revising the scope of licensing policy applicable to certain telecommunications links and satellite radio and satellite television services.

The changes made by this rule are intended to update, consistent with LIBERTAD and other relevant legislation, certain provisions of the United States embargo of Cuba to: (i) Address the impact of economic and technological changes that have taken place in recent years; and (ii) ensure that the embargo continues to support the goals of promoting democracy in Cuba and providing support for the Cuban people. None of the changes made by this rule suspend or terminate the United States embargo of Cuba.

Specific Changes Implemented by This Rule

Changes to License Exception Gift Parcels and Humanitarian Donations (GFT)

License Exception Gift Parcels and Humanitarian Donations (GFT) (§ 740.12 of the EAR) generally authorizes, among other things, exports and reexports of gift parcels by an individual (donor) addressed to an individual or to a religious, educational or charitable organization (donee) for the use of the donee or the donee's immediate family. Prior to the publication of this rule, items eligible for export or reexport to Cuba in gift parcels were limited to food (including vitamins); medicines; medical supplies and devices (including hospital supplies and equipment for the handicapped); receive-only radio equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment; and mobile phones covered by Export Control Classification Numbers (ECCNs) 5A991 or 5A992,

software for those phones covered by ECCN 5D992, and batteries, memory cards, chargers and other accessories for such mobile phones. Additionally, the License Exception restricted recipients in Cuba to identified family members of the donor (grandparents, parents, siblings, children and grandchildren). Except for gift parcels of food, the License Exception restricted a donor to sending only one gift parcel per month to the same household in Cuba. The License Exception also limited the combined total domestic retail value of all items other than food included in a gift parcel to \$400.

This rule revises License Exception GFT to add clothing, personal hygiene items, seeds, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and non-sensitive items normally sent as gifts between individuals as items eligible for export or reexport to Cuba in gift parcels. The rule largely retains the restriction that precludes items listed in specific entries on the Commerce Control List. However, the rule does allow inclusion of consumer communications devices controlled by ECCNs 4A994, 4D994, 5A991, 5A992, 5D991, and 5D992. These devices, which are described in more detail in the discussion of the new License Exception for consumer communications devices below, are widely available consumer products, such as personal computers, that facilitate communications.

This rule also revises License Exception GFT to remove requirements that the donee be a member of the immediate family of the donor and that only one gift parcel per month be sent to the same household in Cuba. As revised, License Exception GFT authorizes a donor to send one gift parcel per month to any individual (other than certain Cuban Government or Cuban Communist Party officials) or to a charitable, educational, or religious organization in Cuba that is not administered or controlled by the Cuban government. For example, hospitals or schools administered or controlled by the Cuban Government are not eligible recipients under this License Exception. Further, this rule revises the License Exception to increase the combined total domestic retail value of all items included in a gift parcel from \$400 to \$800.

Changes to License Exception Baggage (BAG)

Prior to publication of this rule, and since 2004, the terms of License Exception BAG imposed a 44-pound weight limit on the personal baggage of

most travelers from the United States to Cuba. This rule removes that limit. This change implements the President's directive to lift weight restrictions on accompanied baggage.

This rule does not remove or relax any other restrictions that apply to License Exception BAG. The regulations continue to require that individuals leaving the United States temporarily (i.e., traveling) must bring back items exported or reexported under this License Exception unless they consume the items abroad or are otherwise authorized to dispose of them under the EAR.

Donated Consumer Communications Devices, Computers and Software

Prior to publication of this rule, with the exception of certain items authorized by License Exception GFT, the export or reexport to Cuba of donated consumer communications devices required an individual validated license.

This rule creates a narrowly tailored License Exception Consumer Communications Devices (CCD) to authorize the export and reexport to Cuba of donated consumer communications devices that are necessary to provide efficient and adequate telecommunications services between the United States and Cuba. In generally authorizing the export or reexport of donated consumer communication devices to Cuba through a new License Exception, this rule strengthens the United States' commitment to the support of individuals and organizations to promote nonviolent democratic change in Cuba, consistent with the goals of LIBERTAD and the Cuban Democracy Act of 1992, and recognizes that recent changes in communications technology have facilitated the widespread dissemination of information and personal communications in ways that have become increasingly essential for democratic movements across the world. This rule is also consistent with the President's goal, as stated in his April 13 memorandum, to promote contacts between Americans and their relatives who reside in Cuba as a means of encouraging positive change in Cuba.

New License Exception CCD authorizes the export or reexport of specific commodities and software that are widely available for retail purchase and that are commonly used to exchange information and facilitate interpersonal communications. However, consistent with 22 U.S.C. 6005(a), this new License Exception does not authorize U.S.-owned or controlled entities in third countries to

engage in reexports of foreign produced commodities to Cuba for which no license would be issued by the Treasury Department pursuant to 31 CFR 515.559. This License Exception is valid only for exports or reexports to Cuba. The commodities and software exported or reexported under this License Exception must be donated, but the License Exception provides no limits on value or frequency of shipments. Eligible end-users for items exported or reexported pursuant to this License Exception are individuals in Cuba other than designated Cuban Government and Communist Party officials, and also independent non-governmental organizations in Cuba. As is the case with exports or reexports under License Exception GFT, exports or reexports under License Exception CCD may not be made to organizations administered or controlled by the Cuban Government.

The items authorized for export or reexport under the new License Exception are commodities and software (except "encryption source code") related to basic personal communications devices that are widely available for retail purchase in the United States. These items include: Mobile phones, including cellular and satellite telephones; subscriber information module (SIM) cards; personal digital assistants; laptop and desktop computers and peripherals such as monitors, graphics accelerator cards, data storage devices and media such as disk drives, flash drives, writable compact disks and floppy disks, keyboards, mice, and printers including commodities possessing IEEE 802.15.1 "Bluetooth" wireless personal area networking (WPAN) capability; Internet connectivity devices including those possessing IEEE 802.11 "Wi-Fi" and IEEE 802.16 "WiMax" wireless capabilities; satellite-based television and radio receivers; digital music and video players and recorders; personal two-way radios; digital cameras and memory cards therefor; and batteries, chargers, carrying cases and similar accessories for the equipment authorized by this rule. This rule also authorizes the export and reexport of basic software for laptop and desktop computers such as: Computer operating systems and software (except "encryption source code") that enable activities such as word processing, producing spread sheets, producing graphics presentations, sending and receiving e-mail, Web browsing or developing relational databases. When applicable, the rule describes these items as they are classified on the Commerce Control List:

- Computers classified under ECCN 4A994.b or designated EAR99 that do not exceed an adjusted peak performance of 0.02 weighted teraflops;
- Disk drives and solid state storage equipment classified as ECCN 5A992 or designated EAR99;
- Input/output control units (other than industrial controllers designed for chemical processing) designated EAR99;
- Graphics accelerators and graphics coprocessors designated EAR99;
- Monitors classified under ECCN 5A992 or designated EAR99;
- Printers classified under ECCN 5A992 or designated EAR99;
- Modems classified under ECCNs 5A991.b.2 or 5A992 or designated EAR99;
- Network access controllers and communications channel controllers classified under ECCN 5A991.b.4 or designated EAR99;
- Keyboards, mice and similar devices designated EAR99;
- Mobile phones, including cellular and satellite telephones, personal digital assistants, and subscriber information module (SIM) cards and similar devices classified under ECCNs 5A992 or 5A991 or designated EAR99;
- Memory devices classified under ECCN 5A992 or designated EAR99;
- "Information security" equipment, "software" (except "encryption source code") and peripherals classified under ECCNs 5A992 or 5D992 or designated EAR99;
- Digital cameras and memory cards classified under ECCN 5A992 or designated EAR99;
- Television and radio receivers classified under ECCN 5A992 or designated EAR99;
- Recording devices classified under ECCN 5A992 or designated EAR99;
- Batteries, chargers, carrying cases, and accessories for the equipment described above that are designated EAR99; and
- "Software" (except "encryption source code") classified under ECCNs 4D994, 5D991 or 5D992 or designated EAR99 to be used for equipment described above.

This change implements the President's directive to authorize, consistent with national security concerns, the export or reexport to Cuba of donated personal communications devices through a license exception.

Revised Scope of Licensing Policy Regarding Telecommunications

Prior to publication of this rule, § 746.2(b)(2) of the EAR stated that export of "Telecommunications commodities may be authorized on a case-by-case basis, provided the

commodities are part of an FCC-approved project and are necessary to provide efficient and adequate telecommunications between the United States and Cuba."

This rule revises the text of § 746.2(b)(2) of the EAR to ensure that the licensing policy allows for case-by-case review of exports or reexports of all items necessary to provide efficient and adequate telecommunications links, including satellite radio and satellite television, between the United States and Cuba consistent with the President's April 13, 2009 directive. The scope of items eligible for export or reexport now includes any item (commodity, technology, or software) necessary to provide efficient and adequate telecommunications links between the United States and Cuba, including links established through third countries, and including links to provide satellite radio or satellite television services to Cuba. In making this change, BIS notes that the establishment of links through third countries may be necessary to establish efficient and adequate links between the United States and Cuba. These changes are consistent with the goal of enhancing communications to promote democracy in Cuba.

Technical and Conforming Changes

Although individual gift parcels may be eligible for export pursuant to License Exception GFT, as set forth in § 740.12(a) of the EAR, consolidated shipments of multiple gift parcels are not eligible for export under this License Exception. BIS has issued a number of licenses to parties authorizing them to export consolidated shipments of gift parcels to Cuba. As part of this rule, BIS is amending General Order No. 4, found in Supplement No. 1 to part 736 of the EAR, to authorize such license holders to export consolidated shipments of all gift parcels that are eligible for License Exception GFT as of the effective date of this rule. This modification is appropriate because some previously-issued licenses for consolidated shipments limit the eligible commodities and software, eligible recipients, or limits on frequency or dollar value based on the restrictions of License Exception GFT in place at the time the consolidation license was issued. The amended General Order does not, however, increase the total value of exports permitted under, or extend the expiration date of, any license. Amending the General Order to modify existing licenses in such a manner will facilitate implementation of the policy underlying this rule by

allowing consolidators to include all gift parcels consistent with the provisions of License Exception GFT in their consolidated shipments immediately rather than having to wait until they obtain a new license. Consolidators will still need to apply for new licenses when their existing licenses have been completely used or have expired.

Section 740.2(a)(6) of the EAR precludes use of any License Exception to export or reexport to Cuba unless the License Exception is listed in the License Exception paragraph pertaining to Cuba in part 746. This rule revises § 746.2(a)(1) to list the new “Consumer Communications Devices” License Exception that this rule creates.

Change to Prohibitions Applying to Gift Parcels Generally

Although not related to the President’s April 13, 2009 directive, this rule also makes ineligible for inclusion in gift parcels to any destination items listed on the Commerce Control List with “encryption items” (EI) as a reason for control. BIS is making this change because of the sensitivity of such items. Items controlled for EI reasons employ sophisticated encryption techniques and have not been designated as “mass market” items by the United States Government. Such items are not eligible for export or reexport under License Exception GFT because they are not normally exchanged between individuals as gifts. However, because of the potential use of items controlled for EI reasons by persons abroad to harm U.S. national security, foreign policy and law enforcement interests, BIS is adding EI as a reason for control that explicitly precludes use of License Exception GFT to any destination. The other reasons for control that trigger this preclusion are national security, nuclear nonproliferation, chemical and biological weapons and missile technology.

Rulemaking Requirements

1. This rule has been determined to be a significant rule under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information that has been approved by OMB under control number 0694–0088, which carries a burden hour estimate of 58 minutes to

prepare and submit form BIS–748P. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will make no material change to the number of submissions or to the burden imposed by this collection.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 736

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

■ Accordingly, the Export Administration Regulations (15 CFR chapter VII, subchapter C) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. General Order Number 4 of Supplement No. 1 to Part 736 is amended by revising the introductory text and by revising paragraph (b) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 4 of June 13, 2008, as amended on September 3, 2009, amending existing licenses for exports of consolidated gift parcels to Cuba due to changes in License Exception GFT.

* * * * *

(b) Notwithstanding any statements to the contrary on the license itself, licenses authorizing the export to Cuba of consolidated gift parcels described in paragraph (a) of this order that are valid on September 3, 2009 authorize the export of consolidated shipments to Cuba of gift parcels that comply with the requirements of License Exception GFT found in § 740.12(a) of the EAR as of September 3, 2009.

* * * * *

PART 740—[AMENDED]

■ 3. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 4. Section 740.12 is amended by revising paragraphs (a)(2)(i), (a)(2)(iii), (a)(2)(iv) and (a)(2)(v) to read as follows:

§ 740.12 Gift parcels and humanitarian donations.

(a) * * *

(2) * * *

(i) *Item limitations.*

(A) *Prohibited items.*

(1) For Cuba no items listed on the Commerce Control List other than items listed in § 740.19(b) of the EAR may be included in a gift parcel.

(2) For all destinations, no items controlled for chemical and biological weapons (CB), missile technology (MT), national security (NS), nuclear proliferation (NP) or encryption items (EI) reasons on the Commerce Control List (Supplement no. 1 to part 774 of the EAR) may be included in a gift parcel.

(3) *Items prohibited for destinations in Country Group D:1 or E:2.* For destinations in Country Group D:1 or E:2, military wearing apparel may not be included in a gift parcel regardless of whether all distinctive U.S. military insignia, buttons, and other markings are removed.

(4) Gold bullion, gold taels, and gold bars are prohibited as are items intended for resale or reexport.

(B) *Eligible items.* For all destinations, eligible items are food (including vitamins); medicines, medical supplies and devices (including hospital supplies and equipment and equipment for the handicapped); receive-only radio

equipment for reception of commercial/civil AM/FM and short wave publicly available frequency bands, and batteries for such equipment; clothing; personal hygiene items; seeds; veterinary medicines and supplies; fishing equipment and supplies; soap-making equipment; as well as all other items of a type normally sent as gifts between individuals (including items listed in § 740.19(b) of the EAR) except for those items prohibited in paragraph (a)(2)(i)(A) of this section. Items in gift parcels must be in quantities normally given as gifts between individuals.

Example to paragraph (a)(2)(i)(B) of this section. A watch or piece of jewelry is normally sent as a gift. However, multiple watches, either in one package or in subsequent shipments, would not qualify for such gift parcels because the quantity would exceed that normally given between individuals. Similarly, a sewing machine or bicycle within the value limit of this License Exception may be an appropriate gift. However, subsequent shipments of the same item to the same donee would not be a gift normally given between individuals.

* * * * *

(iii) *Frequency.*

(A) Except for gift parcels of food to Cuba, not more than one gift parcel may be sent from the same donor to the same donee in any one calendar month.

(B) There is no frequency limit on gift parcels of food to Cuba.

(C) Parties seeking authorization to exceed the frequency limit due to compelling humanitarian concerns (*e.g.*, for certain gifts of medicine) should submit a license application in accordance with §§ 748.1, 748.4 and 748.6 of the EAR to BIS with complete justification.

(iv) *Value.* The combined total domestic retail value of all commodities and software in a single gift parcel may not exceed \$800. This limit does not apply to food sent in a gift parcel to Cuba.

(v) *Ineligible recipients.*

(A) No gift parcel may be sent to any of the following officials of the Cuban Government: ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first

secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional).

(B) No gift parcel may be sent to any of the following officials or members of the Cuban Communist Party: members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

(C) No gift parcel may be sent to organizations administered or controlled by the Cuban Government or the Cuban Communist Party.

* * * * *

§ 740.14 [Amended]

■ 4. Section 740.14 is amended by:

■ a. removing “(h)” from the last sentence of paragraph (b)(4) introductory text and adding “(g)” in its place;

■ b. removing paragraph (g); and

■ c. redesignating paragraph (h) as paragraph (g).

■ 5. A new § 740.19 is added to read as follows:

§ 740.19 Consumer Communications Devices (CCD).

(a) *Authorization.* This License Exception authorizes the export or reexport of commodities and software described in paragraph (b) to Cuba subject to the conditions in paragraphs (c) and (d) of this section. This section does not authorize U.S.-owned or -controlled entities in third countries to engage in reexports of foreign produced commodities to Cuba for which no license would be issued by the Treasury Department pursuant to 31 CFR 515.559. Cuba is the only eligible destination under this License Exception.

(b) *Eligible Commodities and Software.* Commodities and software eligible for export or reexport under this section are:

(1) Computers designated EAR99 or classified under Export Control Classification Number (ECCN) 4A994.b that do not exceed an adjusted peak performance of 0.02 weighted teraflops;

(2) Disk drives and solid state storage equipment classified under ECCN 5A992 or designated EAR99;

(3) Input/output control units (other than industrial controllers designed for chemical processing) designated EAR99;

(4) Graphics accelerators and graphics coprocessors designated EAR99;

(5) Monitors classified under ECCN 5A992 or designated EAR99;

(6) Printers classified under ECCN 5A992 or designated EAR99;

(7) Modems classified under ECCNs 5A991.b.2, or 5A992 or designated EAR99;

(8) Network access controllers and communications channel controllers classified under ECCN 5A991.b.4 or designated EAR99;

(9) Keyboards, mice and similar devices designated EAR99;

(10) Mobile phones, including cellular and satellite telephones, personal digital assistants, and subscriber information module (SIM) cards and similar devices classified under ECCNs 5A992 or 5A991 or designated EAR99;

(11) Memory devices classified under ECCN 5A992 or designated EAR99;

(12) “Information security” equipment, “software” (except “encryption source code”) and peripherals classified under ECCNs 5A992 or 5D992 or designated EAR99;

(13) Digital cameras and memory cards classified under ECCN 5A992 or designated EAR99;

(14) Television and radio receivers classified under ECCN 5A992 or designated EAR99;

(15) Recording devices classified under ECCN 5A992 or designated EAR99;

(16) Batteries, chargers, carrying cases and accessories for the equipment described in this paragraph that are designated EAR99; and

(17) “Software” (except “encryption source code”) classified under ECCNs 4D994, 5D991 or 5D992 or designated EAR99 to be used for equipment described in this paragraph (b).

(c) *Donation Requirement.* This License Exception authorizes the export or reexport of eligible commodities and software that will be donated by the exporter or reexporter to an eligible end-user or to eligible end-users free of charge. The payment by an end-user of any handling charges arising within the importing country or any charges levied by the government of the importing country shall not be considered a charge for purposes of this paragraph.

(d) *Eligible End-users—(1) Organizations.* This License Exception may be used to export or reexport eligible commodities and software to and for the use of independent non-governmental organizations. The Cuban Government or the Cuban Communist Party and organizations they administer or control are not eligible end-users.

(2) *Individuals.* This License Exception may be used to export eligible commodities and software to and for the use of individuals other than the

following officials of the Cuban Government and Cuban Communist Party:

(i) *Ineligible Cuban Government Officials*. Ministers and vice-ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional).

(ii) *Ineligible Cuban Communist Party Officials*. Members of the Politburo; the Central Committee; Department Heads of the Central Committee; employees of the Central Committee; and the secretaries and first secretaries of provincial Party central committees.

PART 746—[AMENDED]

■ 6. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 7. Section 746.2, is amended by adding a paragraph (a)(1)(xiii) and by revising paragraph (b)(2) to read as follows:

§ 746.2 Cuba.

- (a) * * *
- (1) * * *

(xiii) Commodities and software authorized under License Exception Consumer Communications Devices (CCD) (*see* § 740.19 of the EAR).

* * * * *

- (b) * * *

(2) Items may be authorized for export or reexport to Cuba on a case-by-case basis, provided the items are necessary to provide efficient and adequate telecommunications links between the

United States and Cuba, including links established through third countries, and including the provision of satellite radio or satellite television services to Cuba.

* * * * *

Dated: September 1, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–21402 Filed 9–3–09; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 090126062–91139–01]

RIN 0694–AE54

Revisions to Certain End-User Controls Under the Export Administration Regulations; Clarification Regarding License Requirements for Transfers (in-country) to Persons Listed on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to make revisions to three sections that are used by the United States Government as the basis for placing persons onto the Entity List. These three sections specified license requirements for exports and reexports to persons listed on the Entity List, however; the sections were silent regarding whether or not the scope of the licensing requirements included transfers (in-country). This rule adds transfers (in-country) to the scope of the license requirements under each of the three sections. As a result of adding transfers (in-country) to these three end-user controls, all of the end-use and end-user controls that are used as a regulatory basis for placing persons on the Entity List now specify that the scope of the license requirements includes exports, reexports, and transfers (in-country).

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective September 8, 2009. Although there is no formal comment period,

public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE54, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include “RIN 0694–AE54” in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE54.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet.K.Seehra@omb.eop.gov or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.*, RIN 0694–AE54)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott Sangine, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, *Phone:* (202) 482–3343, *Fax:* (202) 482–3911, *E-mail:* bscott@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited. Persons are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from or changes to the Entity

List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

There are six sections in part 744 of the EAR that provide the regulatory basis for putting persons on the Entity List: §§ 744.2, 744.3, 744.4, 744.10, 744.11, and 744.20. Sections 744.2, 744.3, and 744.4 are foreign policy end-user controls under the EAR that prohibit transactions destined for certain nuclear, missile or chemical and biological end-uses. Sections 744.10, 744.11, and 744.20 are foreign policy end-user controls that prohibit transactions destined for certain individuals. Prior to the publication of this rule, the three end-user controls each specified that they applied to exports and reexports, but were silent on whether these end-user controls also applied to transfers (in-country). The United States Government intends the license requirements for §§ 744.10, 744.11, and 744.20 to apply to transfers (in-country) as well as to exports and reexports. Therefore, this rule extends the scope of these three sections to include transfers (in-country).

The rationale for the extension of this license requirement to include transfers (in-country) is that the United States Government's objective in placing a person on the Entity List on the basis of one of the end-user controls in part 744 of the EAR is to have an opportunity to review any transaction involving items subject to the EAR prior to shipment or transfer (in-country) to a listed person. Regardless of the form of the transaction (export, reexport, or transfer (in-country)), the United States Government believes it is important to review all transactions involving persons listed on the Entity List prior to the initiation of a transaction with a listed person and/or receipt by the listed person of an item in a transaction.

In publishing this rule, the United States Government is achieving the export control objective of allowing the United States Government to have prior review of any transaction involving items subject to the EAR and persons included on the Entity List. This prior review is important because the United States Government does not want these end-users of concern (*i.e.*, persons listed on the Entity List) to receive items subject to the EAR that might allow them to continue their activities of concern without specific United States Government authorization.

This rule also clarifies that prior to the publication of this rule, persons added to the Entity List on the basis of their involvement in the activities described in sections 744.2, 744.3 and

744.4, as described above, were subject to licensing requirements applicable to exports, reexports, and transfers (in-country).

This rule makes the following revisions to the Export Administration Regulations:

In Section 744.10 (Restrictions on Certain Entities in Russia), this rule expands the scope of this end-user control by adding transfer (in-country) to the license requirements of this end-user control. With the publication of this rule, the license requirements for this end-user control apply to exports, reexports, and transfers (in-country). Specifically, this rule revises the second sentence of paragraph (a) to specify that a license is required, to the extent specified on the Entity List, to transfer (in-country) any item subject to the EAR to such entities (*i.e.*, persons added to the Entity List on the basis of § 744.10). This rule also revises paragraph (c) to specify that license applications to transfer (in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

In Section 744.11 (License Requirements that Apply to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States), this rule expands the scope of this end-user control by adding transfer (in-country) to the license requirements of this end-user control. With the publication of this rule, the license requirements for this end-user control apply to exports, reexports, and transfers (in-country). To broaden the scope of this end-user control, this rule makes three changes to this section. First, this rule revises the first sentence of the introductory text of this section to specify that transfers (in-country) are within the scope of the foreign policy controls that BIS may impose under this section. Second, this rule revises the first sentence of paragraph (a) to specify that for the license requirements of this section, a license is required, to the extent specified on the Entity List, to transfer (in-country) any item subject to the EAR to an entity that is listed on the Entity List in an entry that contains a reference to this section (*i.e.*, persons added to the Entity List on the basis of § 744.11). Third, under paragraph (b)(5), this rule adds transfer (in-country) to the scope of this illustrative example provided for the criteria used for revising the Entity List in paragraph (b) of this section.

In Section 744.20 (License Requirements that Apply to Certain Sanctioned Entities), this rule expands the scope of this end-user control by adding transfer (in-country) to the license requirements of this end-user

control. With the publication of this rule, the license requirements for this end-user control apply to exports, reexports and transfers (in-country). Specifically, this rule revises the introductory text of paragraph (a) to specify that a license is required, to the extent specified on the Entity List, to transfer (in-country) any item subject to the EAR to such entities (*i.e.*, persons added to the Entity List on the basis of § 744.20). This rule also revises paragraph (b) to add transfer (in-country) to the general restriction on using license exceptions in paragraph (b) of this section. Lastly, this rule revises paragraph (c) to specify that license applications to transfer (in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

In Supplement No. 4 to part 744 (The Entity List) of the EAR, this rule revises the introductory text of the Entity List to specify that the license requirements for these entities includes exports, reexports and transfers (in-country), unless otherwise stated. This clarification is needed because now all of the sections of part 744 that provide the regulatory basis for adding a person to the Entity List include license requirements for exports, reexports and transfers (in-country), unless otherwise specifically stated in an entry on the Entity List for a listed person.

Consistent with the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), a foreign policy report was submitted to Congress on August 11, 2009, notifying Congress of the imposition of foreign policy-based licensing requirements reflected in this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget

(OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office of Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*;

42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. Section 744.10 is amended:

- a. By revising the second sentence of paragraph (a); and
- b. By revising paragraph (c), to read as follows:

§ 744.10 Restrictions on certain entities in Russia.

(a) * * * A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR to such entities.

* * * * *

(c) *License review standard.*

Applications to export, reexport, or transfer (in-country) items subject to the EAR to these entities will be reviewed with a presumption of denial.

■ 3. Section 744.11 is amended:

- a. By revising the first sentence of the introductory text of the section;
- b. By revising the first sentence of paragraph (a); and
- c. By revising paragraph (b)(5), to read as follows:

§ 744.11 License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States.

BIS may impose foreign policy export, reexport, and transfer (in-country) license requirements, limitations on availability of license exceptions, and set license application review policy based on the criteria in this section.

* * *

(a) * * * A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country)

any item subject to the EAR to an entity that is listed on the Entity List in an entry that contains a reference to this section. * * *

(b) * * *

(5) Engaging in conduct that poses a risk of violating the EAR when such conduct raises sufficient concern that the End-User Review committee believes that prior review of exports, reexports, or transfers (in-country) involving the party and the possible imposition of license conditions or license denial enhances BIS’s ability to prevent violations of the EAR.

■ 4. Section 744.20 is amended:

- a. By revising the first sentence of the introductory text of the section;
- b. By revising the second sentence of paragraph (a); and
- c. By revising paragraphs (b) and (c), to read as follows:

§ 744.20 License requirements that apply to certain sanctioned entities.

BIS may impose, as foreign policy controls, export, reexport, and transfer (in-country) license requirements and set licensing policy with respect to certain entities that have been sanctioned by the State Department.

* * *

(a) * * * A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item to such entities.

(b) License Exceptions. No license exception may be used to export, reexport, or transfer (in-country) to such entities unless specifically authorized on the Entity List.

(c) Licensing policy. Applications to export, reexport, or transfer (in-country) to such entities will be reviewed according to the licensing policy set forth on the Entity List.

■ 5. Supplement No. 4 to part 744 is amended by revising the introductory text, to read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.				

* * * * *

Dated: August 31, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9-21367 Filed 9-4-09; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9459]

RIN 1545-BH53

Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 401(a)(9) and 403(b) of the Internal Revenue Code (Code) to permit a governmental plan to comply with the required minimum distribution rules by using a reasonable and good faith interpretation of the statute. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of governmental plans.

DATES: *Effective Date:* These regulations are effective on September 8, 2009.

Applicability Date: These regulations apply to all plan years to which section 401(a)(9) applies to the plan.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy V. Pastor or Michael P. Brewer at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a)(9) provides required minimum distribution rules for a qualified trust under section 401(a). In general, under these rules, distribution of each participant's entire interest must begin by April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70½ or (2) the calendar year in which the participant retires ("the required beginning date"). If the entire interest of the participant is not distributed by the required beginning date, then section 401(a)(9)(A) provides that the entire interest of the participant must be distributed beginning not later than the required beginning date, in accordance with regulations, over the life of the participant or lives of the participant and a designated beneficiary (or over a

period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary). Section 401(a)(9)(B) provides the required minimum distribution rules after the death of the participant.

IRAs described in section 408, section 403(b) plans, and eligible deferred compensation plans under section 457(b), also are subject to the required minimum distribution rules of section 401(a)(9) pursuant to sections 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections. In 2002, the IRS and the Treasury Department published final regulations under sections 401(a)(9), 403(b), and 408 in the **Federal Register** (67 FR 18987). Section 1.401(a)(9)-1, A-2(a), provides that the final regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. The rules for defined benefit plans and annuities were included in a temporary regulation, § 1.401(a)(9)-6T, as well as in a proposed regulation (67 FR 18834) in order to allow taxpayers to comment on the rules.

In 2004, the IRS and the Treasury Department replaced the temporary regulations with final regulations under § 1.401(a)(9)-6 (69 FR 33288). The final regulations contain a "grandfather rule" in Q&A-16, which provides that annuity distribution options provided under the terms of a governmental plan (within the meaning section 414(d)) as in effect on April 17, 2002, are treated as satisfying the requirements of section 401(a)(9) if they satisfy a reasonable and good faith interpretation of the provisions of section 401(a)(9). In addition, Q&A-17 provides that, for distributions from any defined benefit plan or annuity contract during 2003, 2004, and 2005, the payments could satisfy a reasonable and good faith interpretation of section 401(a)(9) in lieu of § 1.401(a)(9)-6. For governmental plans, § 1.401(a)(9)-6, Q&A-17, extended this reasonable good faith standard to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

In 2003, the IRS and the Treasury Department published final regulations under section 457(b) in the **Federal Register** (68 FR 41230). These regulations included § 1.457-6(d), which provides that a section 457(b) eligible plan must meet the

requirements of section 401(a)(9) and the regulations under that section.

In 2007, the IRS and the Treasury Department published final regulations under section 403(b) in the **Federal Register** (72 FR 41128). These regulations, which become effective for tax years beginning after December 31, 2008, included § 1.403(b)-6(e)(1), which provides that a section 403(b) contract must meet the requirements of section 401(a)(9). Section 1.403(b)-6(e)(2) provides, with certain exceptions, that section 403(b) contracts apply the section 401(a)(9) required minimum distribution rules in accordance with § 1.408-8.

Section 1.408-8, Q&A-1, provides, with certain exceptions, that in order to satisfy section 401(a)(9) for purposes of determining required minimum distributions, the rules of § 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied.

Section 823 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA 06), instructs the Secretary of the Treasury to issue regulations under which, for all years to which section 401(a)(9) applies, a governmental plan, within the meaning of section 414(d), shall be treated as having complied with section 401(a)(9) if such plan complies with a reasonable good faith interpretation of section 401(a)(9).

On July 10, 2008, the IRS and Treasury Department published a notice of proposed rulemaking (REG-142040-07) in the **Federal Register** (73 FR 39630-01) proposing regulations that would implement section 823 of PPA 06 by amending the regulations under sections 401(a)(9) and 403(b) of the Code. The IRS and Treasury Department received no comments on the proposed regulations and no public hearing was requested or held. Accordingly, the provisions of these final regulations are identical to the proposed regulations.

Explanation of Provisions

The final regulations amend the regulations under section 401(a)(9) to treat a governmental plan, within the meaning of section 414(d), as having complied with the rules of section 401(a)(9) if the governmental plan applies a reasonable and good faith interpretation of section 401(a)(9). The same rule applies to an eligible 457(b) plan maintained by a government. In addition, this rule applies to a section 403(b) contract that is part of a governmental plan, and the regulations under section 403(b) are amended accordingly. The final regulations also make conforming amendments to the regulations under section 401(a)(9) that eliminate other special rules for

governmental plans which are rendered superfluous with this change.

Effective/Applicability Date

These regulations are effective on September 8, 2009 and apply to all plan years to which section 401(a)(9) applies.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because §§ 1.401(a)(9)-1 and 1.403(b)-6 do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Michael P. Brewer and Cathy V. Pastor, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.401(a)(9)-1 is amended by adding a new paragraph (d) to A-2 as follows:

§ 1.401(a)(9)-1 Minimum distribution requirement in general.

* * * * *

A-2. * * *

(d) *Special rule for governmental plans.* Notwithstanding anything to the contrary in this A-2, a governmental plan (within the meaning of section 414(d)), or an eligible governmental

plan described in § 1.457-2(f), is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the plan if the plan complies with a reasonable and good faith interpretation of section 401(a)(9).

§ 1.401(a)(9)-6 [Amended]

■ **Par. 3.** Section 1.401(a)(9)-6 is amended by:

- 1. Removing Q&A-16.
- 2. Redesignating Q&A-17 as Q&A-16.
- 3. Removing the word “A-16” and adding “A-15” in the newly-designated A-16.
- 4. Removing the last sentence of the newly-designated A-16.

■ **Par. 4.** Section 1.403(b)-6 is amended by:

- 1. Revising the last sentence of paragraph (e)(2).
- 2. Adding a new paragraph (e)(8).

The revisions and addition are as follows:

§ 1.403(b)-6 Timing of distributions and benefits.

* * * * *

(e) *Minimum required distributions for eligible plans.*

* * * * *

(2) * * * Consequently, except as otherwise provided in this paragraph (e), the distribution rules in section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408-8 for purposes of determining required minimum distributions.

* * * * *

(8) *Special rule for governmental plans.* A section 403(b) contract that is part of a governmental plan (within the meaning of section 414(d)) is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the contract, if the contract complies with a reasonable and good faith interpretation of section 401(a)(9).

* * * * *

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

Approved: August 20, 2009.

Michael Mundaca,
Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9-21453 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9457]

RIN 1545-BG71

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G, and Requirement of Return for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G of the Internal Revenue Code (Code) as amended by sections 302, 305 and 306 of the Tax Relief and Health Care Act of 2006 (the Act). The final regulations also provide guidance relating to the manner and method of reporting and paying the excise tax under sections 4980B, 4980D, 4980E, and 4980G of the Code. These final regulations would affect employers that contribute to employees’ HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan.

DATES: *Effective date.* These regulations are effective on September 8, 2009.

Applicability date. The sections of these regulations that provide guidance on employer comparable contributions to HSAs under section 4980G apply to employer contributions made on or after January 1, 2010. The sections of these regulations that provide guidance relating to the excise tax under sections 4980B, 4980D, 4980E and 4980G apply to any Form 8928 that is due on or after January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations as they relate to sections 4980E or 4980G, Mireille Khoury at (202) 622-6080; and concerning the final regulations as they relate to section 4980B or 4980D, Russ Weinheimer at (202) 622-6080 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of

Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under control number 1545–2146. The collection of information in these final regulations is in § 54.6011–2. The collection of information results from the requirement to file a return for the payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code. The likely respondents are employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains final amendments to the Excise Tax Regulations (26 CFR part 54) under section 4980G of the Code, as amended by Sections 302 and 305 of the Tax Relief and Health Care Act of 2006 (the Act), Public Law 109–432, under paragraph (d) of section 4980G of the Code, as enacted by section 306 of the Act, and under Section 4980E of the Code.

Under section 4980G, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees. On July 31, 2006, final regulations on comparability were published in the **Federal Register**, 72 FR 30501 (2007–26 IRB 1495), TD 9277. In addition, on April 17, 2008, final regulations were published in the **Federal Register**, 73 FR 20794 (2008–20 IRB 975), TD 9393, providing guidance on employer comparable contributions to HSAs in instances where an employee has not established an HSA by December 31st and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. See § 601.601(d)(2).

This document also contains final amendments to the Excise Tax Regulations (26 CFR part 54) under sections 4980B and 4980D. Under section 4980B, group health plans

maintained by an employer with 20 or more employees must comply with continuation coverage requirements. If a plan does not satisfy these requirements, an excise tax is imposed of \$100 per day per affected beneficiary. Final regulations under section 4980B have been published, including provisions concerning the excise tax, but no return filing requirement has previously been imposed. See § 54.4980B–2, Q&A–9 and Q&A–10. Moreover, under chapter 100 of the Code, group health plans must comply with various requirements, including limitations on preexisting condition exclusions, certification of creditable coverage, special enrollments, prohibitions against discrimination based on a health factor (including genetic information), parity between mental health benefits and medical/surgical benefits, minimum hospital lengths of stay in connection with childbirth, and continued coverage for post-secondary students with a serious medical condition. If a plan does not satisfy any of these requirements under chapter 100, section 4980D imposes an excise tax of \$100 per day per affected individual. Regulations interpreting the substantive requirements of chapter 100 have previously been published, but no regulations have been published concerning the excise tax under section 4980D.

On July 16, 2008, proposed regulations (REG–120476–07) were published in the **Federal Register** (73 FR 40793) addressing comparable contributions to nonhighly compensated employees. The proposed regulations also provided guidance for employers that offer qualified HSA distributions and for employers that make the maximum annual HSA contribution on behalf of all employees who are eligible individuals on the first day of the last month of the employees' taxable year. Finally, the proposed regulations provided guidance on the requirement of a return to accompany payment of the excise taxes under sections 4980B, 4980D, 4980E, and 4980G and the time for filing that return. These final regulations adopt the provisions of the proposed regulations without substantive revision. The final regulations make certain minor clarifying changes to the rules of the proposed regulations.

Explanation of Provisions and Summary of Comments

Special Rule for Contributions to Nonhighly Compensated Employees

Paragraph (d) of section 4980G provides an exception to the

comparability rules that allows, but does not require, employers to make larger contributions to the HSAs of nonhighly compensated employees than the employer makes to the HSAs of highly compensated employees. The final regulations address this exception to comparability in § 54.4980G–4 and provide that employer contributions to the HSAs of nonhighly compensated employees may be larger than employer contributions to the HSAs of highly compensated employees with comparable coverage during a period. Conversely, employer contributions to the HSAs of highly compensated employees may not exceed employer contributions to the HSAs of nonhighly compensated employees with comparable coverage during a period.

The comparability rules still apply with respect to contributions to the HSAs of all nonhighly compensated employees who are comparable participating employees (eligible individuals who are in the same category of employees with the same category of high deductible health plan (HDHP) coverage) and an employer must make comparable contributions to the HSA of each nonhighly compensated employee who is a comparable participating employee during the calendar year. Similarly, the comparability rules still apply with respect to contributions to the HSAs of all highly compensated employees who are comparable participating employees and an employer must make comparable contributions to the HSA of each highly compensated employee who is a comparable participating employee during the calendar year. Collectively bargained employees are disregarded for purposes of section 4980G, as are HSA contributions made through a cafeteria plan.

For purposes of section 4980G(d), highly compensated employee is defined under section 414(q) and includes any employee who was (1) a five-percent owner at any time during the year or the preceding year; or (2) for the preceding year, (A) had compensation from the employer in excess of \$110,000 (for 2009, indexed for inflation) and (B) if elected by the employer, was in the group consisting of the top 20 percent of employees when ranked based on compensation. Nonhighly compensated employees are employees that are not highly compensated employees.

Maximum HSA Contribution Permitted for Employees Who Become Eligible Individuals Mid-Year

Section 305 of the Act provides that individuals who are eligible individuals

on the first day of the last month of the employees' taxable year (December 1 for calendar year taxpayers) may make or have made on their behalf the maximum annual HSA contribution based on their HDHP coverage (self only or family) on that date. A portion of the contribution is included in income and subject to an additional 10 percent tax if the individual fails to remain an eligible individual for 12 months after the last month of the taxable year. See section 223(b)(8). Section 54.4980G-6 of the final regulations provides that the employer can contribute up to this maximum contribution on behalf of all employees who are eligible individuals on the first day of the last month of the employees' taxable year (December 1 for calendar year taxpayers), including employees who became eligible individuals after January 1st of the calendar year and eligible individuals who were hired after January 1st of the calendar year (both such classes of individuals are hereinafter referred to as "mid-year eligible individuals"). An employer who makes the maximum calendar year HSA contribution, or who contributes more than a pro-rata amount, on behalf of employees who are mid-year eligible individuals will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.

Employers are not required to make these greater than pro-rata contributions and may instead pro-rate contributions based on the number of months that an individual was both employed by the employer and an eligible individual. However, if an employer contributes more than the monthly pro-rata amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must then contribute, on an equal and uniform basis, a greater than pro-rata amount to the HSAs of all comparable participating employees who are mid-year eligible individuals. Likewise, if the employer contributes the maximum annual contribution amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must contribute that same amount to the HSAs of all comparable participating employees who are mid-year eligible individuals.

Special Comparability Rules for Qualified HSA Distributions

Section 302(a) of the Act provides for qualified HSA distributions. See section 106(e) and Notice 2007-22 (2007-10 IRB 670). See § 601.601(d)(2). A

qualified HSA distribution is a direct distribution of an amount from a health flexible spending arrangement (health FSA) or a health reimbursement arrangement (HRA) to an HSA. The distribution must not exceed the lesser of the balance in the health FSA or HRA on September 21, 2006, or as of the date of the distribution. Section 54.4980G-7 of the final regulations provides that if an employer offers qualified HSA distributions to any employee who is an eligible individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, an employer that offers qualified HSA distributions only to employees who are eligible individuals covered under the employer's HDHP is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer's HDHP.

Reporting and Payment of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G

The regulations prescribe the manner and method of paying the excise taxes imposed under section 4980B, 4980D, 4980E, or 4980G. The final regulations, like the proposed regulations, provide that these excise taxes must be reported on Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code." The excise tax under section 4980B, 4980D, 4980E or 4980G must be paid at the time prescribed for filing of the excise tax return (without extensions). With respect to the excise tax under section 4980B or 4980D for employers and third parties such as insurers or third party administrators, the return is due on or before the due date for filing the person's Federal income tax return. An extension to file the person's income tax return does not extend the date for filing Form 8928. With respect to the excise tax under section 4980B or 4980D for multiemployer or specified multiple employer health plans, the return is due on or before the last day of the seventh month after the end of the plan year. Finally, with respect to the excise tax under section 4980E or 4980G for noncomparable contributions, the return is due on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made. The final regulations also provide guidance regarding the place for filing these excise tax returns, the signing of these excise returns, and the time and place for paying the tax shown on such returns.

Two comments were received regarding the reporting and filing of the excise taxes under sections 4980B, 4980D, 4980E, and 4980G. One commentator was concerned that the noncompliance period under section 4980B or 4980D could extend beyond the due date for filing the excise tax return and suggested that the due date be extended to 90 days after the end of the noncompliance period. It is true that the noncompliance period under section 4980B, for example, could extend over four or more taxable years of the person responsible for payment of the tax. Therefore, extending the due date until 90 days after the end of the noncompliance period would in some cases defer the obligation to pay the excise tax for over four years, which would not be in the interest of sound tax administration. As such, the final regulations do not adopt this change.

Another commentator noted that the excise tax might be due before the person responsible for paying it had even discovered that a failure under section 4980B or 4980D had occurred. However, this concern is mitigated by the fact that sections 4980B and 4980D provide that the excise tax does not apply for any period for which the responsible party did not know, or exercising reasonable diligence would not have known, that the failure existed. Also, under sections 4980B and 4980D, the excise tax does not apply if the failure is corrected (that is, the failure is retroactively undone to the extent possible and the affected beneficiary is placed in a financial position as good as the beneficiary would have been had the failure not occurred).

Finally, a commentator also stated that there are some uncertainties about the application of the excise tax rules to various situations that could arise under section 4980B. The commentator suggested that the filing and payment requirement for the excise tax under section 4980B should not apply until additional guidance was issued that addressed these uncertainties. The Treasury Department and the IRS believe that the statutory and regulatory provisions in this area provide appropriate guidance. Therefore, the final regulations do not adopt this comment.

The guidance in the proposed regulations relating to the excise taxes imposed under section 4980B, 4980D, 4980E, or 4980G was contained in Q & A-11 in § 4980B-2, Q & A-1 in § 4980D-1, Q & A-1 in § 4980E-1, and Q & A-5 in § 4980G-1. The final regulations provide additional clarifying information relating to the guidance previously provided in these Q & As,

and the final regulations also consolidate this guidance by including it under the following sections: §§ 54.6011-2, 54.6061-1, 54.6071-1, 54.6091-1 and 54.6151-1.

Effective/Applicability Date

The sections of these regulations that provide guidance on employer comparable contributions to HSAs under section 4980G apply to employer contributions made on or after January 1, 2010.

The sections of these regulations that provide guidance relating to the excise tax under sections 4980B, 4980D, 4980E and 4980G apply to any Form 8928 that is due on or after January 1, 2010.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these final regulations are Mireille Khoury and Russ Weinheimer, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 54 is amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 1.** The authority citation for part 54 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 54.4980G-6 also issued under 26 U.S.C. 4980G.

Section 54.4980G-7 also issued under 26 U.S.C. 4980G. * * *

■ **Par. 2.** Section 54.4980B-0 is amended by adding a new Q-11 to § 54.4980B-2 in the list of questions to read as follows:

§ 54.4980B-0 Table of contents.

* * * * *

List of Questions

* * * * *

§ 54.4980B-2 Plans that must comply.

* * * * *

Q-11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

* * * * *

■ **Par. 3.** Section 54.4980B-2 is amended by adding a new Q&A-11 to read as follows:

§ 54.4980B-2 Plans that must comply.

* * * * *

Q-11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-11: (a) *In general.* See §§ 54.6011-2 and 54.6151-1.

(b) *Due date for filing of return by employers or other persons responsible for benefits under a group health plan.* See § 54.6071-1(a)(1).

(c) *Due date for filing of return by multiemployer plans.* See § 54.6071-1(a)(2).

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q & A-11, the rules in this Q & A-11 are effective for taxable years beginning on or after January 1, 2010. In the case of a plan mentioned in paragraph (c) of this Q & A-11, the rules in this Q & A-11 are effective for plan years beginning on or after January 1, 2010.

■ **Par. 4.** Section 54.4980D-1 is added to read as follows:

§ 54.4980D-1 Requirement of return and time for filing of the excise tax under section 4980D.

Q-1: If a person is liable for the excise tax under section 4980D, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-1: (a) *In general.* See §§ 54.6011-2 and 54.6151-1.

(b) *Due date for filing of return by employers.* See § 54.6071-1(b)(1).

(c) *Due date for filing of return by multiemployer plans or multiple employer health plans.* See § 54.6071-1(b)(2).

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q & A-1, the rules in this Q & A-1 are effective for taxable years beginning on or after January 1, 2010. In the case of a plan mentioned in paragraph (c) of this Q & A-1, the rules in this Q & A-1 are effective for plan years beginning on or after January 1, 2010.

■ **Par. 5.** Section 54.4980E-1 is added to read as follows:

§ 54.4980E-1 Requirement of return and time for filing of the excise tax under section 4980E.

Q-1: If a person is liable for the excise tax under section 4980E, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-1: (a) *In general.* See §§ 54.6011-2, 54.6151-1 and 54.6071-1(c).

(b) *Effective/applicability date.* The rules in this Q & A-1 are effective for plan years beginning on or after January 1, 2010.

■ **Par. 6.** Section 54.4980G-1 is amended by:

■ 1. Revising the last sentence in A-1 and adding a new sentence at the end of paragraph (a) in A-2.

■ 2. Adding a new Q & A-5.

The revisions and addition read as follows:

§ 54.4980G-1 Failure of employer to make comparable health savings account contributions.

* * * * *

A-1: * * * But see Q & A-6 in § 54.4980G-3 for treatment of collectively bargained employees and Q & A-1 in § 54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

* * * * *

A-2: (a) * * * See also § 54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

* * * * *

Q-5: If a person is liable for the excise tax under section 4980G, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-5: (a) *In general.* §§ 54.6011-2, 54.6151-1 and 54.6071-1(d).

(b) *Effective/applicability date.* The rules in this Q & A-5 are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

- **Par. 7.** Section 54.4980G-3 is amended by:
 - 1. Revising the section heading.
 - 2. Revising the introductory text in paragraph (a) of A-5.
 - 3. Adding a new sentence at the end of paragraph (c) of A-5 and paragraph (a) of A-9.

The revision and additions read as follows:

§ 54.4980G-3 Failure of employer to make comparable health savings account contributions.

* * * * *

A-5: (a) *Categories.* The categories of employees for comparability testing are as follows (but see Q & A-6 of this section for the treatment of collectively bargained employees and Q & A-1 of § 54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees)—

* * * * *

(c) * * * But see § 54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

A-9: (a) * * * See § 54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

- **Par. 8.** Section 54.4980G-4 is amended by:
 - 1. Adding a new sentence at the end of paragraph (a) of A-1.
 - 2. Adding paragraphs (h), (i) and (j) to A-2.

The additions read as follows:

§ 54.4980G-4 Calculating comparable contributions.

* * * * *

A-1: (a) * * * But see Q & A-1 of § 54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

A-2: * * *

* * * * *

(h) *Maximum contribution permitted for all employees who are eligible individuals during the last month of the taxable year.* An employer may contribute up to the maximum annual contribution amount for the calendar year (based on the employees' HDHP coverage) to the HSAs of all employees who are eligible individuals on the first day of the last month of the employees' taxable year, including employees who worked for the employer for less than the entire calendar year and employees who became eligible individuals after January 1st of the calendar year. For example, such contribution may be

made on behalf of an eligible individual who is hired after January 1st or an employee who becomes an eligible individual after January 1st. Employers are not required to provide more than a pro-rata contribution based on the number of months that an individual was an eligible individual and employed by the employer during the year. However, if an employer contributes more than a pro-rata amount for the calendar year to the HSA of any eligible individual who is hired after January 1st of the calendar year or any employee who becomes an eligible individual any time after January 1st of the calendar year, the employer must contribute that same amount on an equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q & A-1 in § 54.4980G-1) who are hired or become eligible individuals after January 1st of the calendar year. Likewise, if an employer contributes the maximum annual contribution amount for the calendar year to the HSA of any eligible individual who is hired after January 1st of the calendar year or any employee who becomes an eligible individual any time after January 1st of the calendar year, the employer must contribute the maximum annual contribution amount on an equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q & A-1 in § 54.4980G-1) who are hired or become eligible individuals after January 1st of the calendar year. An employer who makes the maximum calendar year contribution or more than a pro-rata contribution to the HSAs of employees who become eligible individuals after the first day of the calendar year or eligible individuals who are hired after the first day of the calendar year will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.

(i) *Examples.* The following examples illustrate the rules in paragraph (h) in this Q & A-2. In the following examples, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

Example 1. On January 1, 2010, Employer Q contributes \$1,000 for the calendar year to the HSAs of employees who are eligible individuals with family HDHP coverage. In mid-March of the same year, Employer Q hires Employee A, an eligible individual with family HDHP coverage. On April 1, 2010, Employer Q contributes \$1,000 to the HSA of Employee A. In September of the same year, Employee B becomes an eligible individual with family HDHP coverage. On October 1,

2010, Employer G contributes \$1,000 to the HSA of Employee B. Employer Q does not make any other contributions for the 2010 calendar year. Employer Q's contributions satisfy the comparability rules.

Example 2. For the 2010 calendar year, Employer R only has two employees, Employee C and Employee D. Employee C, an eligible individual with family HDHP coverage, works for Employer R for the entire calendar year. Employee D, an eligible individual with family HDHP coverage works for Employer R from July 1st through December 31st. Employer R contributes \$1,200 for the calendar year to the HSA of Employee C and \$600 to the HSA of Employee D. Employer R does not make any other contributions for the 2010 calendar year. Employer R's contributions satisfy the comparability rules.

(j) *Effective/applicability date.* The rules in paragraphs (h) and (i) of Q & A-2 are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

* * * * *

- **Par. 9.** Section 54.4980G-6 is added to read as follows:

§ 54.4980G-6 Special rule for contributions made to the HSAs of nonhighly compensated employees.

Q-1: May an employer make larger contributions to the HSAs of nonhighly compensated employees than to the HSAs of highly compensated employees?

A-1: Yes. Employers may make larger HSA contributions for nonhighly compensated employees who are comparable participating employees than for highly compensated employees who are comparable participating employees. See Q & A-1 in § 54.4980G-1 for the definition of comparable participating employee. For purposes of this section, highly compensated employee is defined under section 414(q). Nonhighly compensated employees are employees that are not highly compensated employees. The comparability rules continue to apply with respect to contributions to the HSAs of all nonhighly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each nonhighly compensated employee who is a comparable participating employee.

Q-2: May an employer make larger contributions to the HSAs of highly compensated employees than to the HSAs of nonhighly compensated employees?

A-2: (a) *In general.* No. Employer contributions to HSAs for highly compensated employees who are comparable participating employees may not be larger than employer HSA contributions for nonhighly

compensated employees who are comparable participating employees. The comparability rules continue to apply with respect to contributions to the HSAs of all highly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each highly compensated comparable participating employee. See Q & A-1 in § 54.4980G-1 for the definition of comparable participating employee.

(b) *Examples.* The following examples illustrate the rules in Q & A-1 and Q & A-2 of this section. No contributions are made through a section 125 cafeteria plan and none of the employees in the following examples are covered by a collective bargaining agreement. All of the employees in the following examples have the same HDHP deductible for the same category of coverage.

Example 1. In 2010, Employer A contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A makes no contribution to the HSA of any full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A's HSA contributions for calendar year 2010 satisfy the comparability rules.

Example 2. In 2010, Employer B contributes \$2,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B also contributes \$1,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B's HSA contributions for calendar year 2010 satisfy the comparability rules.

Example 3. In 2010, Employer C contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C contributes \$2,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C's HSA contributions for calendar year 2010 do not satisfy the comparability rules.

Example 4. In 2010, Employer D contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer D also contributes \$1,000 to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. In addition, the employer contributes an additional \$500 to the HSA of each nonhighly compensated employee who participates in a wellness program. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer D's

HSA contributions for calendar year 2010 do not satisfy the comparability rules.

Example 5. In 2010, Employer E contributes \$1,000 for the calendar year to the HSA of each full-time non-management nonhighly compensated employee who is an eligible individual with family HDHP coverage. Employer E also contributes \$500 for the calendar year to the HSA of each full-time management nonhighly compensated employee who is an eligible individual with family HDHP coverage. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer E's HSA contributions for calendar year 2010 do not satisfy the comparability rules.

Q-3: May an employer make larger HSA contributions for employees with self plus two HDHP coverage than employees with self plus one HDHP coverage even if the employees with self plus two are all highly compensated employees and the employees with self plus one are all nonhighly compensated employees?

A-3: (a) Yes. Q & A-1 in § 54.4980G-4 provides that an employer's contribution with respect to the self plus two category of HDHP coverage may not be less than the contribution with respect to the self plus one category and the contribution with respect to the self plus three or more category may not be less than the contribution with respect to the self plus two category. Therefore, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus two category of HDHP coverage than to self plus one coverage, even if the employees with self plus two coverage are all highly compensated employees and the employees with self plus one coverage are all nonhighly compensated employees. Likewise, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus three category of HDHP coverage than to self plus two coverage, even if the employees with self plus three coverage are all highly compensated employees and the employees with self plus two coverage are all nonhighly compensated employees.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q & A-3. In the following example, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

Example. In 2010, Employer F contributes \$1,000 for the calendar year to the HSA of each full-time employee who is an eligible individual with self plus one HDHP coverage. Employer F contributes \$1,500 for the calendar year to the HSA of each

employee who is an eligible individual with self plus two HDHP coverage. The deductible for both the self plus one HDHP and the self plus two HDHP is \$2,000. Employee A, an eligible individual, is a nonhighly compensated employee with self plus one coverage. Employee B, an eligible individual, is a highly compensated employee with self plus two coverage. For the 2010 calendar year, Employer F contributes \$1,000 to Employee A's HSA and \$1,500 to Employee B's HSA. Employer F's HSA contributions satisfy the comparability rules.

Q-4: What is the effective date for the rules in this section?

A-4: The rules in this section are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

■ **Par. 10.** Section 54.4980G-7 is added to read as follows:

§ 54.4980G-7 Special comparability rules for qualified HSA distributions contributed to HSAs on or after December 20, 2006 and before January 1, 2012.

Q-1: How do the comparability rules of section 4980G apply to qualified HSA distributions under section 106(e)(2)?

A-1: The comparability rules of section 4980G do not apply to amounts contributed to employee HSAs through qualified HSA distributions. However, in order to satisfy the comparability rules, if an employer offers qualified HSA distributions, as defined in section 106(e)(2), to any employee who is an eligible individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, if an employer offers qualified HSA distributions only to employees who are eligible individuals covered under the employer's HDHP, the employer is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer's HDHP.

Q-2: What is the effective date for the rules in this section?

A-2: The rules in this section are effective for employer contributions made for calendar years beginning on or after January 1, 2010.

■ **Par. 11.** Section 54.6011-2 is added to read as follows:

§ 54.6011-2 General requirement of return, statement, or list.

Effective for any Form 8928 that is due on or after January 1, 2010, any person liable for tax under section 4980B, 4980D, 4980E, or 4980G of the Code shall file a return with respect to the tax on Form 8928. The return must include the information required by Form 8928 and the instructions issued with respect to it.

■ **Par. 12.** Section 54.6061–1 is added to read as follows:

§ 54.6061–1 Signing of returns and other documents.

Effective for any Form 8928 that is due on or after January 1, 2010, any return, statement, or other document required to be made with respect to a tax imposed by section 4980B, 4980D, 4980E, or 4980G of the Code or the regulations under section 4980B, 4980D, 4980E, or 4980G must be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

■ **Par. 13.** Section 54.6071–1 is added to read as follows:

§ 54.6071–1 Time for filing returns.

(a) *Returns under section 4980B.* (1) *Due date for filing of return by employers or other persons responsible for benefits under a group health plan.* If the person liable for the excise tax is an employer or other person responsible for providing or administering benefits under a group health plan (such as an insurer or a third party administrator), the return required by § 54.6011–2 must be filed on or before the due date for filing the person's income tax return and must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the person's taxable year. An extension to file the person's income tax return does not extend the date for filing Form 8928.

(2) *Due date for filing of return by multiemployer plans.* If the person liable for the excise tax is a multiemployer plan, the return required by § 54.6011–2 must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the plan's plan year.

(b) *Returns under section 4980D.* (1) *Due date for filing of return by employers.* If the person liable for the excise tax is an employer, the return required by § 54.6011–2 must be filed on or before the due date for filing the employer's income tax return and must reflect the portion of the noncompliance period for each failure under chapter

100 that falls during the employer's taxable year. An extension to file the employer's income tax return does not extend the date for filing Form 8928.

(2) *Due date for filing of return by multiemployer plans or multiple employer health plans.* If the person liable for the excise tax is a multiemployer plan or a specified multiple employer health plan, the return required by § 54.6011–2 must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under chapter 100 that falls during the plan's plan year.

(c) *Returns under section 4980E.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing the return required by § 54.6011–2 on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made.

(d) *Returns under section 4980G.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing the return required by § 54.6011–2 on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made. See Q & A–4 of § 54.4980G–1 for the rules on computation of the excise tax under section 4980G.

(e) *Effective/applicability date:* The rules in this section are effective for any Form 8928 that is due on or after January 1, 2010.

■ **Par. 14.** Section 54.6091–1 is added to read as follows:

§ 54.6091–1 Place for filing excise tax returns under section 4980B, 4980D, 4980E, or 4980G.

Effective for any Form 8928 that is due on or after January 1, 2010, the return required by § 54.6011–2 must be filed at the place specified in the forms and instructions provided by the Internal Revenue Service.

■ **Par. 15.** Section 54.6151–1 is added to read as follows:

§ 54.6151–1 Time and place for paying of tax shown on returns.

Effective for any Form 8928 that is due on or after January 1, 2010, the tax shown on any return which is imposed under section 4980B, 4980D, 4980E or 4980G shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to

the time and place for filing such return, see §§ 54.6071–1 and 54.6091–1.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: August 20, 2009.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–21225 Filed 9–4–09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is amending the Cuban Assets Control Regulations to implement the President's initiative of April 13, 2009, to promote greater contact between separated family members in the United States and Cuba and to increase the flow of remittances and information to the Cuban people. These amendments also implement provisions of the Omnibus Appropriations Act, 2009.

DATES: *Effective Date:* September 3, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Policy, tel.: 202–622–4855, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on demand service, tel.: 202–622–0077.

Background

The Cuban Assets Control Regulations, 31 CFR part 515 ("CACR"), were issued by the U.S. Government on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. App. 5 *et seq.*). Today, OFAC is amending the CACR to implement measures announced by the President on April 13, 2009, to promote

greater contact between separated family members in the United States and Cuba and to increase the flow of remittances and information to the Cuban people. OFAC also is amending the CACR to implement certain provisions of the Omnibus Appropriations Act, 2009 (Pub. L. 111-8, 123 Stat. 524) ("Appropriations Act"), as well as to make certain technical and conforming changes.

Travel to visit close relatives in Cuba. Sections 515.560 and 515.561 are amended to make a number of changes to the rules regarding travel-related transactions incident to visiting relatives in Cuba. Pursuant to July 2004 amendments to the CACR, and prior to March 11, 2009, OFAC issued specific licenses on a case-by-case basis to persons subject to the jurisdiction of the United States for visits, no more than once every three years and for a period not to exceed 14 days, to a member of the person's "immediate family" (defined as any spouse, child, grandchild, parent, grandparent, or sibling of the traveler or the traveler's spouse, as well as any spouse, widow, or widower of any of the foregoing) who was a national of Cuba. A licensed traveler was authorized to spend up to \$50 a day for living expenses in Cuba and an additional \$50 per trip to cover transportation-related expenses within Cuba as necessary. Any individual accompanying a licensed family traveler had to separately qualify for a family travel specific license. Also pursuant to the July 2004 amendments to the CACR, and prior to March 11, 2009, persons subject to the jurisdiction of the United States who wished to visit a family member who was not a national of Cuba (e.g., a U.S. national traveling in Cuba pursuant to an OFAC license) had to obtain a specific license that would only be issued in certain exigent circumstances.

In response to Section 621 of the Appropriations Act, which prohibited the expenditure of Fiscal Year 2009 appropriated funds to administer, implement, or enforce the July 2004 CACR amendments related to family travel, OFAC issued a general license and a new statement of specific licensing policy on its Web site. These new provisions, which were issued on March 11, 2009, reverted to the family travel policy that had been in place immediately prior to the July 2004 amendments. This March 11 general license authorized one trip per year to visit a broader category of "close relatives" (including, for example, aunts, uncles, cousins, and second cousins) who were nationals of Cuba. The March 11 general license contained

no limit on the duration of such a visit and increased the authorized expenditures in Cuba to match the expenditures allowed for all other authorized categories of travel—the current State Department per diem for Havana (for use anywhere in Cuba) plus amounts for additional transactions directly incident to visiting close relatives in Cuba. The general license also authorized family travelers to be accompanied by persons who share a common dwelling as a family with them. For visits to family who were not nationals of Cuba, the March 11 statement of specific licensing policy provided for case-by-case authorization of visits to the broader category of "close relatives" without the former exigent circumstances limitation.

OFAC is amending section 515.561 to reflect the March 11 general license issued on OFAC's Web site and to further expand this authorization by removing the once per year frequency limitation, so that family travelers can now visit their close relatives as often as they wish. OFAC also is extending this authorization to close relatives of U.S. Government employees assigned to the U.S. Interests Section in Havana. Accordingly, prior paragraph (a) of section 515.561 is replaced by two new general licenses. New paragraph (a)(1) of section 515.561 contains a general license authorizing the travel-related transactions set forth in section 515.560(c) and additional transactions that are directly incident to visiting a close relative who is a national of Cuba, as that term is defined in section 515.302. New paragraph (a)(2) of section 515.561 provides this same authorization for visits to a close relative who is a U.S. Government employee assigned to the U.S. Interests Section in Havana.

The term "close relative" is defined in new section 515.339 as any individual related to a person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person. Both new general licenses contained in paragraphs (a)(1) and (a)(2) of section 515.561 authorize persons who share a common dwelling as a family with a licensed family traveler to accompany the licensed traveler on a family visit.

OFAC also is amending section 515.561 to reflect the March 11 statement of specific licensing policy published on OFAC's Web site with respect to visits to family members who are not nationals of Cuba. Accordingly, the specific licensing policy in paragraph (b) of section 515.561 is amended to apply to visits to "close

relatives" (as defined in new section 515.339) and to remove the requirement that certain exigent circumstances must exist for a license to be issued.

OFAC is amending section 515.560(c)(2) by removing the \$50 per day limit on living expenses in Cuba, as well as the \$50 per trip limit on transportation-related expenses within Cuba, that formerly applied to licensed family visits. New section 515.560(c)(2) authorizes all transactions ordinarily incident to travel anywhere in Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, that do not exceed the "maximum per diem rate," as established by the Department of State for Havana, Cuba, in effect at the time travel to Cuba takes place. The current "maximum per diem rate" may be found on the Department of State's Office of Allowances Web site (<http://aoprals.state.gov>). Nothing in these amendments authorizes the importation into the United States of any merchandise purchased or otherwise acquired in Cuba. The Commerce Department's Bureau of Industry and Security is separately amending its regulations to remove the weight restriction on authorized baggage carried by travelers to Cuba.

Remittances to nationals of Cuba. Prior to these amendments, remittances from persons subject to the jurisdiction of the United States to nationals of Cuba were limited to "immediate family" of the remitter and capped at \$300 per recipient household in any consecutive three-month period. OFAC is amending paragraph (a) of section 515.570 to remove all limitations on the amount and frequency with which persons subject to the jurisdiction of the United States may make authorized remittances to nationals of Cuba and to expand the category of permitted recipients to "close relatives," as defined in new section 515.339. These amendments do not affect the prohibition on remittances to a "prohibited official of the Government of Cuba" or a "prohibited member of the Cuban Communist Party." The definitions of those terms have been moved to new sections 515.337 and 515.338, respectively. The general license that existed in paragraph (a) prior to these amendments authorizing periodic \$300 remittances from a blocked account to a recipient in a third country in whose name, or for whose beneficial interest, the account is held has been moved to paragraph (c).

OFAC is amending paragraph (b) of section 515.570, which authorizes two separate one-time emigration-related remittances, to increase the value limit of each of these remittances from \$500

to \$1,000. This change is being made to reflect increases in emigration-related expenses since the original \$500 caps were set in 1991.

To track the amendments to paragraphs (a) and (b) of section 515.570, and subject to certain conditions, OFAC is amending paragraph (c) of section 515.570 to authorize unlimited remittances from an inherited blocked account in a banking institution in the United States to the account holder if s/he is a close relative of the decedent, as defined in new section 515.339, as well as limited emigration-related remittances from inherited blocked accounts. As noted above, amended paragraph (c) also authorizes remittances of up to \$300 in any consecutive three-month period from any blocked account (including an account with funds other than inherited funds) to a Cuban national in a third country who is an individual in whose name, or for whose beneficial interest, the account is held.

OFAC also is amending paragraph (c)(4)(i) and paragraph (d)(2) of section 515.560. The changes to paragraph (c)(4)(i) of section 515.560 increase from \$300 to \$3,000 the total amount of family remittances an authorized traveler may carry to Cuba. The changes to paragraph (d)(2) of section 515.560 increase from \$300 to \$3,000 the amount of funds received as remittances that a national of Cuba departing the United States may carry.

Remittance-related transactions by banks and other depository institutions. A new general license in amended paragraph (a)(3) of section 515.572 authorizes depository institutions to act as forwarders for remittances. A depository institution, as defined in section 515.333, no longer needs specific authorization from OFAC to provide services as a remittance forwarder. However, depository institutions and licensed remittance forwarders are required to collect from persons who use their services information showing compliance with the remittance provisions in this part. Depository institutions are permitted to set up testing arrangements and exchange authenticator keys with Cuban financial institutions to forward remittances authorized by or pursuant to section 515.570 but may not open or use direct correspondent accounts of their own with Cuban financial institutions.

Certain telecommunications services, contracts, related payments, and travel-related transactions authorized. OFAC is making substantial revisions to section 515.542 to implement the President's directive related to

increasing the flow of information to the Cuban people. Paragraph (b) is amended to authorize all transactions, including but not limited to payments, incident to the provision of telecommunications services between the United States and Cuba, the provision of satellite radio or satellite television services to Cuba, or the entry into and performance under roaming service agreements with telecommunications services providers in Cuba, by a telecommunications services provider that is a person subject to U.S. jurisdiction. Former paragraph (c), which set forth a case-by-case licensing policy for payments to Cuba for authorized telecommunications services, is removed in light of paragraph (b)'s new general license authorizing such payments. Paragraph (b) does not authorize the entry into or performance of a contract with or for the benefit of any particular individual in Cuba or any transactions incident to the establishment of facilities to provide telecommunications services linking the United States and Cuba or third countries and Cuba. These activities are covered instead by new paragraphs (c), (d)(1), and (d)(2).

New paragraph (c) of section 515.542 authorizes all persons subject to U.S. jurisdiction to enter into, and make payments under, contracts with non-Cuban telecommunications services providers, or particular individuals in Cuba, for services provided to particular individuals in Cuba, such as a contract for cellular telephone service for a phone owned and used by a particular individual in Cuba, provided that the individual is not a prohibited official of the Government of Cuba or a prohibited member of the Cuban Communist Party, as defined in sections 515.337 and 515.338, respectively. The authorization in new paragraph (c) includes, but is not limited to, payment for activation, installation, usage (monthly, pre-paid, intermittent, or other), roaming, maintenance, and termination fees.

Newly added paragraph (d)(1) of section 515.542 contains a general license authorizing transactions incident to the establishment of facilities to provide telecommunications services linking the United States and Cuba, including but not limited to fiber-optic cable and satellite telecommunications facilities. Newly added paragraph (d)(2) provides a statement of specific licensing policy with respect to transactions incident to the establishment of facilities to provide telecommunications services linking third countries and Cuba, including but not limited to fiber-optic cable and satellite facilities, provided that such facilities are necessary to provide

efficient and adequate telecommunications services between the United States and Cuba. Additional newly added paragraphs set out certain reporting requirements and clarifications.

Travel-related transactions incident to these new authorizations in section 515.542 are addressed by amendments to sections 515.564 and 515.533. New paragraph (a)(3) of section 515.564 provides a general license authorizing, with certain conditions, the travel-related transactions set forth in section 515.560(c) and additional transactions that are directly incident to participation in professional meetings for the commercial marketing of, sales negotiation for, or performance under contracts for the provision of the telecommunications services, or the establishment of facilities to provide telecommunications services, authorized by the general licenses in section 515.542. With respect to those commercial telecommunications transactions that will require Commerce-authorized exports of telecommunications-related items, new paragraph (f) of section 515.533 provides a general license authorizing, with certain conditions, the travel-related transactions set forth in section 515.560(c) and additional transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications-related items that have been authorized for commercial export or re-export to Cuba by the Department of Commerce.

Travel-related transactions incident to agricultural and medical sales authorized. OFAC is amending section 515.533 of the CACR to add new paragraph (e) authorizing certain travel-related transactions (former paragraph (e) has been redesignated as paragraph (g)). Pursuant to Section 620 of the Appropriations Act, which amended section 910(a) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7209(a)), new paragraph (e) contains a general license authorizing, with certain conditions, the travel-related transactions set forth in section 515.560(c) and additional transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of agricultural commodities, medicine, or medical devices that appear consistent with the export or re-export licensing policy of the Department of Commerce.

Authorization of most transactions of Cuban nationals lawfully present in the United States in a non-visitor status.

Amendments to the CACR published March 24, 2003 (68 FR 14141), added a new general license at paragraph (c) of section 515.505 authorizing most transactions with Cuban national individuals who are granted humanitarian or other parole into the United States and remain in the United States pursuant to that grant of parole. This general license was intended to apply to all Cuban nationals who are lawfully present in the United States other than those who are in the United States on a temporary basis (e.g., an individual on a non-immigrant visa valid only for a specified period). The requirement that a Cuban national individual be paroled into the United States in order to be covered by the general license resulted in the unintended exclusion of Cuban national individuals who are lawfully present in the United States in a non-visitor status but who are not in a paroled status (e.g., those granted refugee status).

OFAC is amending paragraph (c) of section 515.505 to eliminate this unintended limitation by replacing the requirement that the individual be a national of Cuba "who has been paroled into the United States" with a requirement that the individual be a national of Cuba "who is lawfully present in the United States in a non-visitor status." A sentence is added to paragraph (c) explaining that the term *non-visitor status* does not apply to an individual who is present in the United States on a non-immigrant visa valid only for a specified period of time. Conforming amendments are made to paragraph (e)(2), which contains an example of the application of the paragraph (c) general license.

Additional forms of evidence accepted with applications for specific licenses unblocking Cuban nationals permanently resident outside of Cuba. Former paragraph (b) of section 515.505 contained a statement of licensing policy pursuant to which OFAC would issue a specific license unblocking a Cuban national who had taken up permanent residence in a third country. Historically, OFAC required that a Cuban national obtain a permanent residence status recognized by the government of the relevant third country in documents issued by that government. Accordingly, former paragraph (b) required the submission of at least two documents from a list of qualifying documents issued by that third-country government showing permanent resident status.

In recent years, OFAC increasingly has had to address situations where Cuban nationals have permanently left Cuba, and in some cases have lived

outside of Cuba for many years, but are unable to provide the type or quantity of evidence required by paragraph (b) of section 515.505. In some of these cases, the relevant foreign government maintains a policy that allows the Cuban national to reside there permanently, but that government does not issue documentation officially recognizing the Cuban national as a "permanent resident." In other cases, the Cuban national may have left Cuba too recently to establish permanent residence in a third country, but other evidence, such as the circumstances under which the Cuban national left Cuba, clearly demonstrates that s/he either does not intend to, or would not be welcome to, return to Cuba. To address the cases that may warrant the issuance of a license but where the applicant cannot meet the evidentiary burden required by former paragraph (b), OFAC is revising that paragraph to allow for increased consideration of, and favorable licensing actions based upon, other evidence.

Public Participation

Because the amendments of the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Banks, Banking, Blocking of Assets, Cuba, Currency, Foreign trade, Imports, Reporting and recordkeeping requirements, Securities, Travel restrictions.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets

Control amends 31 CFR part 515 as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 is revised to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6082); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 111–8, 123 Stat. 524; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart C—General Definitions

■ 2. Add § 515.337 to subpart C to read as follows:

§ 515.337 Prohibited officials of the Government of Cuba.

For purposes of this part, the term *prohibited officials of the Government of Cuba* means Ministers and Vice-ministers, members of the Council of State and the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors, and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; and members and employees of the Supreme Court (Tribuno Supremo Nacional).

■ 3. Add § 515.338 to read as follows:

§ 515.338 Prohibited members of the Cuban Communist Party.

For purposes of this part, the term *prohibited members of the Cuban Communist Party* means members of the Politburo, the Central Committee, Department Heads of the Central Committee, employees of the Central Committee, and secretaries and first secretaries of the provincial Party central committees.

■ 4. Add § 515.339 to read as follows:

§ 515.339 Close relative.

(a) For purposes of this part, the term *close relative* used with respect to any person means any individual related to that person by blood, marriage, or

adoption who is no more than three generations removed from that person or from a common ancestor with that person.

(b) *Example:* Your mother's first cousin is your close relative for purposes of this part, because you are both no more than three generations removed from your great-grandparents, who are the ancestors you have in common. Similarly, your husband's great-grandson is your close relative for purposes of this part, because he is no more than three generations removed from your husband. Your daughter's father-in-law is not your close relative for purposes of this part, because you have no common ancestor.

Subpart D—Interpretations

§ 515.411 [Removed and reserved]

■ 5. Remove and reserve § 515.411.

§ 515.418 [Removed and reserved]

■ 6. Remove and reserve § 515.418.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 7. Amend § 515.505 by italicizing the first sentence of paragraph (a) and by revising the section heading, paragraphs (b), (c), and (e)(2), and the notes to paragraphs (a) and (b) to read as follows:

§ 515.505 Certain Cuban nationals unblocked; transactions of certain other Cuban nationals lawfully present in the United States.

(a) * * *

Note to paragraph (a): An individual unblocked pursuant to this paragraph does not become blocked again merely by leaving the United States. An individual unblocked national remains unblocked unless and until the individual thereafter becomes domiciled in or a permanent resident of Cuba, meets any of the criteria in § 515.302(a)(2) through (5), or is a "specially designated national" of Cuba, as that term is defined in § 515.306 of this part.

(b) *Specific licenses unblocking certain individuals who have taken up permanent residence outside of Cuba.* Individual nationals of Cuba who have taken up permanent residence outside of Cuba may apply to the Office of Foreign Assets Control to be specifically licensed as unblocked nationals. Applications for specific licenses under this paragraph should include copies of at least two documents issued by the government authorities of the new country of permanent residence, such as a passport, voter registration card, permanent resident alien card, or national identity card. In cases where two of such documents are not available, other information will be

considered, such as evidence that the individual has been resident for the past two years without interruption in a single country outside of Cuba or evidence that the individual does not intend to, or would not be welcome to, return to Cuba.

Note to paragraph (b): An individual unblocked pursuant to this paragraph remains unblocked unless and until the individual thereafter becomes domiciled in or a permanent resident of Cuba, meets any of the criteria in § 515.302(a)(2) through (5), or is a "specially designated national" of Cuba, as that term is defined in § 515.306 of this part.

(c) *General license authorizing certain transactions of individuals who are lawfully present in the United States in a non-visitor status.* An individual national of Cuba who is lawfully present in the United States in a non-visitor status is authorized to engage in all transactions available to an unblocked national, as that term is defined in § 515.307 of this part, except that all property in which the individual has an interest that was blocked pursuant to this part prior to the date on which the individual became lawfully present in the United States in a non-visitor status shall remain blocked. Such an individual is further authorized to withdraw a total amount not to exceed \$250 in any one calendar month from any blocked accounts held in the individual's name. For the purposes of this section, the term "non-visitor status" does not apply to an individual who is present in the United States on a non-immigrant visa valid only for a specified period of time.

* * * * *

(e) * * *

(2) *Example 2:* A national of Cuba with a blocked U.S. bank account arrives in the United States without a valid visa but is allowed by the U.S. Government to remain in the United States in a non-visitor status. One year later, he applies for and receives permanent resident alien status. From the date he was permitted to remain in the United States in a non-visitor status until the date he applies for permanent resident alien status, he qualifies for the general license contained in paragraph (c) of this section. During this time he can engage in all transactions as if he is an unblocked national, with the exception that he cannot gain access to his blocked bank account other than to withdraw \$250 each month. Beginning at the point in time when he applies for permanent resident alien status, he is licensed as an unblocked national pursuant to paragraph (a) of this section. At this time, he can apply to OFAC for

a specific license to have his blocked bank account unblocked.

* * * * *

■ 8. Amend § 515.533 by revising the section heading, paragraph (a) introductory text, and the note to paragraph (b), by redesignating existing paragraph (e) as paragraph (g) and revising newly designated paragraph (g), and by adding new paragraphs (e) and (f) to read as follows:

§ 515.533 Transactions incident to exportations from the United States and reexportations of 100% U.S.-origin items to Cuba; negotiation of executory contracts.

(a) All transactions ordinarily incident to the exportation of items from the United States, or the reexportation of 100% U.S.-origin items from a third country, to any person within Cuba are authorized, provided that:

* * * * *

Note to paragraph (b): This paragraph does not authorize transactions related to travel to, from, or within Cuba. See paragraphs (e) and (f) for general licenses, and paragraph (g) for a statement of specific licensing policy, with respect to such transactions.

* * * * *

(e) *General license for travel-related transactions incident to sales of agricultural commodities, medicine, or medical devices.* The travel-related transactions set forth in § 515.560(c) and additional transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of agricultural commodities, medicine, or medical devices that appear consistent with the export or re-export licensing policy of the Department of Commerce are authorized, provided that:

(1) The traveler is regularly employed by a producer or distributor of the agricultural commodities, medicine, or medical devices or by an entity duly appointed to represent such a producer or distributor;

(2) The traveler's schedule of activities does not include free time, travel, or recreation in excess of that consistent with a full work schedule; and

(3) The traveler submits to OFAC at least 14 days in advance of each departure to Cuba a written report identifying both the traveler and the producer or distributor and describing the purpose and scope of such travel. Within 14 days of return from Cuba, the traveler shall submit a written report describing the business activities conducted, the persons with whom the traveler met in the course of such activities, and the expenses incurred. Such reports must be captioned

“Section 515.533(e) Report” and faxed to 202/622-1657 or mailed to the Office of Foreign Assets Control, *Attn:* Licensing Division, 1500 Pennsylvania Avenue, NW., Annex-2nd Floor, Washington, DC 20220. If more than one traveler is traveling on the same trip for or on behalf of the same producer or distributor, one combined pre-trip and one combined post-trip report may be filed covering all such travelers.

(f) *General license for travel-related transactions incident to sales of telecommunications-related items.* The travel-related transactions set forth in § 515.560(c) and additional transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications-related items that have been authorized for commercial export or re-export to Cuba by the Department of Commerce are authorized, provided that:

(1) The traveler is regularly employed by a telecommunications services provider that is a person subject to U.S. jurisdiction or by an entity duly appointed to represent such a provider;

(2) The traveler's schedule of activities does not include free time, travel, or recreation in excess of that consistent with a full work schedule; and

(3) The traveler submits to OFAC at least 14 days in advance of each departure to Cuba a written report identifying both the traveler and the telecommunications services provider that is a person subject to U.S. jurisdiction and describing the purpose and scope of such travel. Within 14 days of return from Cuba, the traveler shall submit a written report describing the business activities conducted, the persons with whom the traveler met in the course of such activities, and the expenses incurred. Such reports must be captioned “Section 515.533(f) Report” and faxed to 202/622-1657 or mailed to the Office of Foreign Assets Control, *Attn:* Licensing Division, 1500 Pennsylvania Avenue, NW., Annex-2nd Floor, Washington, DC 20220. If more than one traveler is traveling on the same trip for or on behalf of the same telecommunications services provider that is a person subject to U.S. jurisdiction, one combined pre-trip and one combined post-trip report may be filed covering all such travelers.

(g) *Specific licenses for travel-related transactions incident to exports.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in § 515.560(c) and additional transactions that are directly incident to the

marketing, sales negotiation, accompanied delivery, or servicing in Cuba of exports that appear consistent with the export or re-export licensing policy of the Department of Commerce and are not authorized by the general licenses in paragraphs (e) and (f) of this section.

■ 9. Revise § 515.542 to read as follows:

§ 515.542 Mail and telecommunications-related transactions.

(a) All transactions of common carriers incident to the receipt or transmission of mail between the United States and Cuba are authorized.

(b) All transactions, including but not limited to payments, incident to the provision of telecommunications services between the United States and Cuba, the provision of satellite radio or satellite television services to Cuba, or the entry into and performance under roaming service agreements with telecommunications services providers in Cuba, by a telecommunications services provider that is a person subject to U.S. jurisdiction are authorized. This paragraph does not authorize any transactions addressed in paragraphs (c), (d), (f) or (g) of this section, nor does it authorize the entry into or performance of a contract with or for the benefit of any particular individual in Cuba.

(c) All persons subject to U.S. jurisdiction are authorized to enter into, and make payments under, contracts with non-Cuban telecommunications services providers, or particular individuals in Cuba, for telecommunications services provided to particular individuals in Cuba, provided that such individuals in Cuba are not prohibited officials of the Government of Cuba, as defined in § 515.337 of this part, or prohibited members of the Cuban Communist Party, as defined in § 515.338 of this part. The authorization in this paragraph includes, but is not limited to, payment for activation, installation, usage (monthly, pre-paid, intermittent, or other), roaming, maintenance, and termination fees.

(d)(1) *General license for telecommunications facilities linking the United States and Cuba.* Transactions incident to the establishment of facilities to provide telecommunications services linking the United States and Cuba, including but not limited to fiber-optic cable and satellite facilities, are authorized.

(2) *Specific licenses for telecommunications facilities linking third countries and Cuba.* Specific licenses may be issued on a case-by-case basis authorizing transactions incident

to the establishment of facilities to provide telecommunications services linking third countries and Cuba, including but not limited to fiber-optic cable and satellite facilities, provided that such facilities are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(e) Any entity subject to U.S. jurisdiction relying on paragraph (b), (c), (d)(1), or (d)(2) of this section shall notify OFAC in writing within 30 days after commencing or ceasing to offer such services, as applicable, and shall furnish by January 15 and July 15 of each year semiannual reports providing the total amount of all payments made to Cuba or a third country related to any of the services authorized by this section during the prior six months. These notifications and reports must be captioned “Section 515.542 Notification” or “Section 515.542 Report” and faxed to 202/622-6931 or mailed to the Office of Foreign Assets Control, *Attn:* Policy Division, 1500 Pennsylvania Avenue, NW., Annex-4th Floor, Washington, DC 20220.

(f) For the purposes of this section, the term *telecommunications services* includes but is not limited to telephone, telegraph, and similar services and the transmission of satellite radio and satellite television broadcasts and news wire feeds.

(g) Nothing in this section authorizes the exportation or re-exportation of any items to Cuba. For the rules related to authorization of exports and re-exports to Cuba, see §§ 515.533 and 515.559 of this part.

(h) For an authorization of travel-related transactions that are directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications-related items that have been authorized for commercial export to Cuba by the U.S. Department of Commerce, see § 515.533(f) of this part. For an authorization of travel-related transactions that are directly incident to participation in professional meetings for the commercial marketing of, sales negotiation for, or performance under contracts for the provision of the telecommunications services, or the establishment of facilities to provide telecommunications services, authorized by paragraphs (b), (c), or (d)(1) of this section, see paragraph (a)(3) of section 515.564 of this part. Nothing in this § 515.542 authorizes transactions related to travel to, from, or within Cuba.

§ 515.545 [Amended]

■ 10. Amend § 515.545 by removing paragraph (a) and by redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

■ 11. Amend § 515.560 by removing paragraph (f); by redesignating paragraph (g) as paragraph (f); and by revising paragraphs (a)(1), (a)(4), (a)(12), (c)(1), (c)(2), (c)(4)(i), and (d) to read as follows:

§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

(a) * * * (1) Family visits (general and specific licenses) (see § 515.561);

(4) Professional research and professional meetings (general and specific licenses) (see § 515.564);

(12) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or -controlled foreign firms (general and specific licenses) (see §§ 515.533 and 515.559).

(1) Transportation to and from Cuba. All transportation-related transactions ordinarily incident to travel to and from (not within) Cuba are authorized.

(2) Living expenses in Cuba. All transactions ordinarily incident to travel anywhere within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, are authorized, provided that, unless otherwise authorized, the total for such expenses does not exceed the "maximum per diem rate" for Havana, Cuba, in effect during the period that the travel takes place. The maximum per diem rate is published in the Department of State's "Maximum Travel per Diem Allowances for Foreign Areas," a supplement to section 925, Department of State Standardized Regulations (Government Civilians, Foreign Areas), which is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371945, Pittsburgh, PA 1520-7954, and on the Department of State's Office of Allowances Web site (http://aoprals.state.gov).

(i) The total of all family remittances authorized by § 515.570(a) does not exceed \$3,000, and

(d) A blocked Cuban national permanently resident outside the United States who is departing the United States may carry currency, as that term is defined in paragraph (c)(5) of this section, as follows:

(1) The amount of any currency brought into the United States by the Cuban national and registered with U.S. Customs and Border Protection upon entry;

(2) Up to \$3,000 in funds received as remittances by the Cuban national during his or her stay in the United States; and

■ 12. Revise § 515.561 to read as follows:

§ 515.561 Persons visiting close relatives in Cuba.

(a) General license. (1) Persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them are authorized to engage in the travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to visiting a close relative, as defined in § 515.339 of this part, who is a national of Cuba, as defined in § 515.302 of this part.

(2) Persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them are authorized to engage in the travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to visiting a close relative, as defined in § 515.339 of this part, who is a U.S. Government employee assigned to the U.S. Interests Section in Havana.

(b) Specific licenses. Specific licenses may be issued on a case-by-case basis authorizing persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them to engage in the travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to visiting a close relative, as defined in § 515.339 of this part, who is neither a national of Cuba, as defined in § 515.302 of this part, nor a U.S. Government employee assigned to the U.S. Interests Section in Havana.

■ 13. Amend § 515.564 by adding headings to paragraphs (a)(1) and (a)(2), and by adding new paragraph (a)(3) to read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) * * * (1) Professional research.

(2) Professional meetings organized by an international professional organization. * * *

(3) Professional meetings for commercial telecommunications transactions. The travel-related transactions set forth in § 515.560(c) and additional transactions directly incident to participation in professional meetings for the commercial marketing of, sales negotiation for, or performance under contracts for the provision of the telecommunications services, or the establishment of facilities to provide telecommunications services, authorized by paragraphs (b), (c), or (d)(1) of § 515.542 of this part by a telecommunications services provider that is a person subject to U.S. jurisdiction are authorized, provided that:

(i) The traveler is regularly employed by a telecommunications services provider that is a person subject to U.S. jurisdiction or by an entity duly appointed to represent such a provider; and

(ii) The traveler's schedule of activities does not include free time, travel, or recreation in excess of that consistent with a full work schedule.

■ 14. Revise § 515.570 to read as follows:

§ 515.570 Remittances to Nationals of Cuba.

(a) Family remittances authorized. Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to nationals of Cuba who are close relatives, as defined in § 515.339 of this part, of the remitter, provided that:

(1) The remittances are not made from a blocked source. Certain remittances from blocked accounts are authorized pursuant to paragraph (c) of this section;

(2) The recipient is not a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part; and

(3) The remittances are not made for emigration-related purposes. Remittances for emigration-related purposes are addressed by paragraph (b) of this section.

(b) Two one-time \$1,000 emigration-related remittances authorized. Persons subject to the jurisdiction of the United States are authorized to remit the following amounts:

(1) Up to \$1,000 per payee on a one-time basis to Cuban nationals for the purpose of covering the payees'

preliminary expenses associated with emigrating from Cuba to the United States. These remittances may be sent before the payees have received valid visas issued by the State Department or other approved U.S. immigration documents, but may not be carried by a licensed traveler to Cuba until the payees have received valid visas issued by the State Department or other approved U.S. immigration documents. See § 515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (c) of this section.

(2) Up to an additional \$1,000 per payee on a one-time basis to Cuban nationals for the purpose of enabling the payees to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of exit or third-country visa fees or other travel-related fees. These remittances may be sent only once the payees have received valid visas issued by the State Department or other approved U.S. immigration documents. A remitter must be able to provide the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance. See § 515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (c) of this section.

(c) Provided the recipient is not a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part, certain remittances from blocked sources are authorized as follows:

(1) Funds deposited in a blocked account in a banking institution in the United States held in the name of, or in which the beneficial interest is held by, a national of Cuba as a result of a valid testamentary disposition, intestate succession, or payment from a life insurance policy or annuity contract triggered by the death of the policy or contract holder may be remitted:

(i) To that national of Cuba, provided that s/he is a close relative, as defined in § 515.339 of this part, of the decedent;

(ii) To that national of Cuba as emigration-related remittances in the amounts and consistent with the criteria set forth in paragraph (b) of this section.

(2) Up to \$300 in any consecutive three-month period may be remitted from any blocked account in a banking institution in the United States to a Cuban national in a third country who

is an individual in whose name, or for whose beneficial interest, the account is held.

(d) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction, including but not limited to non-governmental organizations and individuals, to independent non-governmental entities in Cuba, including but not limited to pro-democracy groups, civil society groups, and religious organizations, and to members of such groups or organizations;

(2) Remittances from a blocked account to a Cuban national in excess of the amount specified in paragraph (c)(2) of this section; or

(3) Remittances by persons subject to U.S. jurisdiction to a person in Cuba, directly or indirectly, for transactions to facilitate non-immigrant travel by an individual in Cuba to the United States under circumstances where humanitarian need is demonstrated, including but not limited to illness or other medical emergency.

Note to § 515.570: For the rules relating to the carrying of remittances to Cuba, see § 515.560(c)(4) of this part. Persons subject to U.S. jurisdiction are prohibited from engaging in the collection or forwarding of remittances to Cuba unless authorized pursuant to § 515.572. For a list of authorized U.S. remittance service providers other than depository institutions, see Authorized Providers of Air, Travel and Remittance Forwarding Services to Cuba available from OFAC's Web site (www.treas.gov/ofac).

■ 15. Amend § 515.572 by revising paragraph (a)(3) and adding a note to paragraph (a)(3) to read as follows:

§ 515.572 Authorization of transactions incident to the provision of travel services, carrier services, and remittance forwarding services.

(a) * * *

(3) *Authorization of remittance forwarders.* Persons subject to U.S. jurisdiction, including persons that provide payment forwarding services and noncommercial organizations acting on behalf of donors, that wish to provide services in connection with the collection or forwarding of remittances authorized pursuant to this part must obtain specific authorization from OFAC. Depository institutions, as defined in § 515.333, are hereby authorized to provide these services without obtaining specific authorization from OFAC. However, all licensed remittance forwarders, including depository institutions, that forward remittances authorized pursuant to this part are required to collect from persons

who use their services information showing compliance with the relevant remittance provisions of this part. Depository institutions are permitted to set up testing arrangements and exchange authenticator keys with Cuban financial institutions to forward remittances authorized by or pursuant to § 515.570, but may not open or use direct correspondent accounts of their own with Cuban financial institutions.

Note to paragraph (a)(3): A suggested form for the collection of information showing compliance with the remittance provisions in § 515.570 is available from OFAC's Web site (www.treas.gov/ofac).

* * * * *

Dated: September 1, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

Approved: September 1, 2009.

Stuart A. Levey,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. E9-21440 Filed 9-3-09; 4:15 pm]

BILLING CODE 4811-45-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2008-0047]

RIN 1625-AA01

Anchorage Regulations; Port of New York and Vicinity

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the existing special anchorage area at Perth Amboy, New Jersey, at the junction of the Raritan River and Arthur Kill. This action is necessary to facilitate safe navigation and provide for a safe and secure anchorage for vessels of not more than 20 meters in length. This action is intended to increase the safety of life and property on the Raritan River and Arthur Kill, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective October 8, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-0047 and are available online by going to <http://>

www.regulations.gov, inserting "USCG-2008-0047" in the "Keyword" box, and pressing "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeff Yunker, Waterways Management Division, Coast Guard, telephone 718-354-4195, e-mail Jeff.M.Yunker@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 8, 2008, the Coast Guard published in the **Federal Register** a notice of proposed rulemaking (NPRM) entitled "Anchorage Regulations; Port of New York and Vicinity" (73 FR 26054). We received two letters commenting on the proposed rule, both of which stated the geographic coordinates appeared to be incorrect. One of the commenters suggested additional revisions to the proposed rule and requested a public meeting in the event the Coast Guard decided not to make the changes suggested. No public meeting was held, as the Coast Guard incorporated the commenter's suggestions in a supplemental notice of proposed rulemaking (SNPRM) published on April 2, 2009 (74 FR 14938). We received one letter commenting on the SNPRM. After publication of the SNPRM, no public meeting was requested and none was held.

Background and Purpose

During times of tidal shifts, vessels moored near the edge of this special anchorage area were found swinging out into the Raritan River Cutoff and the Raritan River Federal Channels. Since moored vessels in a special anchorage area are exempt from the Inland Rules of the Road [Rule 30 (33 U.S.C 2030) and Rule 35 (33 U.S.C. 2035)], vessels swinging out into these Federal Channels create a high risk of collision with larger commercial vessels that transit past this special anchorage area, especially at night and during times of inclement weather. Also, when larger commercial vessels maneuver to avoid a collision with recreation vessels that swing out into these channels it creates a hazardous, close-quarters passing

situation with other larger commercial vessels operating within these Federal Channels.

On May 8, 2008, the Coast Guard published a notice of proposed rulemaking (NPRM) titled "Anchorage Regulations; Port of New York and Vicinity" in the **Federal Register** (73 FR 26054). That NPRM contained incorrect coordinates. Therefore, on April 2, 2009, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) titled "Anchorage Regulations; Port of New York and Vicinity" (74 FR 14938). In that SNPRM, the Coast Guard corrected the coordinates and also incorporated suggestions made in comments on the May 2008 NPRM. Specifically, the Coast Guard proposed to expand the northern boundary of the special anchorage area, explained its decision not to require an additional buffer zone between moored vessels and the Federal Channel, proposed a revised prohibition on use of mooring piles or stakes, and proposed revised contact information provided for the Fleet Captain of the Raritan Yacht Club.

The Coast Guard received one letter commenting on the SNPRM. Those comments are discussed below.

Discussion of Comments and Changes

The Coast Guard received one letter commenting on the SNPRM. The commenter requested that only the Raritan Yacht Club main telephone number (732-826-2277) or VHF Channel 9 be published for mooring placement requests, and that the other telephone number be removed because it is a personal number. Additionally, due to revisions made to the NPRM, the commenter withdrew the previous request for a public hearing. The Coast Guard agrees with these comments. The contact information in the regulation will be revised to reflect this comment.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the fact that this rule requires recreational vessels to anchor a greater distance from the Raritan River Cutoff and Raritan River Federal Channels. As displayed on the government navigation charts, the current boundaries of the special anchorage area and adjacent Federal Channels nearly overlap. This rule greatly reduces the possibility of marine casualties, pollution incidents, or human fatalities that could be caused by these recreational vessels anchoring within, or near, the Federal Channels and causing a collision with any of the approximately 5,000 commercial vessels that transit the Raritan River Cutoff Channel on an annual basis. Vessel transit statistics from the ACOE Navigation Data Center are available online at: <http://www.iwr.usace.army.mil/ndc/wcsc/wcsc.htm>. Additionally, vessels are still able to anchor in an area approximately 850 to 1,050 yards wide by 480 to 980 yards long off the southern Perth Amboy shoreline.

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 might be small entities: the owners or operators of recreational vessels intending to anchor immediately adjacent to Raritan River Cutoff and Raritan River Federal Channels, which could cause a marine casualty, pollution incident, or human fatality due to a commercial vessel colliding with the anchored or moored recreational vessel(s). This rule will also affect commercial vessels by reducing the possibility that they will encounter hazardous, close-quarters passing conditions created by recreational vessels within the channels. However, the requirements contained within the rule will not have a significant economic impact on these entities for the following reasons: the revised special anchorage area requires vessels

to moor, or anchor, at a greater distance from the Raritan River and Raritan River Cutoff Federal Channels, reducing the threat of collision with vessels transiting the adjacent Federal Channel. This special anchorage area was never designed to authorize vessels to anchor, or moor, in a manner where they would extend into the Federal Channel creating a hazard to navigation. Additionally, vessels will still be able to anchor in an area approximately 850 to 1,050 yards wide by 480 to 980 yards long off the southern Perth Amboy shoreline.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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.ID, 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(f), of the Instruction. This rule involves the expansion of a Special Anchorage Area. This rule fits the category selected from paragraph 34(f) as it is a Special Anchorage Area. 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 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05-1;

Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.60(d)(10) to read as follows:

§ 110.60 Captain of the Port, New York.

* * * * *

(d) * * *

(10) Perth Amboy, NJ. All waters bound by the following points: 40°30'26.00" N, 074°15'42.00" W; thence to 40°30'24.29" N, 074°15'35.20" W; thence to 40°30'02.79" N, 074°15'44.16" W; thence to 40°29'35.70" N, 074°16'08.88" W; thence to 40°29'31.00" N, 074°16'20.75" W; thence to 40°29'47.26" N, 074°16'49.82" W; thence to 40°30'02.00" N, 074°16'41.00" W, thence along the shoreline to the point of origin.

(i) This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the Raritan Yacht Club Fleet Captain (telephone 732-826-2277 or VHF Channel 9) to ensure compliance with local and State laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited seaward of the pier head line. Mariners are encouraged to contact the Raritan Yacht Club Fleet Captain for any additional ordinances or laws and to ensure compliance with additional applicable State and local laws.

(ii) [Reserved]

* * * * *

Dated: July 30, 2009.

J.L. Nimmich,

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

[FR Doc. E9-21435 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2009-0795]

Drawbridge Operation Regulations; Hampton River, Hampton, NH, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR1A Bridge across the Hampton River at mile 0.0, at Hampton, New Hampshire. This temporary deviation allows the SR1A Bridge to remain in the closed position for 10 hours to facilitate bridge maintenance.

DATES: This deviation is effective from 7 a.m. through 5 p.m. on September 15, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0795 and are available online at http://www.regulations.gov, inserting USCG-2009-0795 in the "Keyword" and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223-8364, john.w.mcdonald@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

The SR1A Bridge, across the Hampton River at mile 0.0, at Hampton, New Hampshire, has a vertical clearance in the closed position of 18 feet at mean high water and 26 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.697.

The waterway predominantly supports recreational vessels of various sizes.

The bridge owner, New Hampshire Department of Transportation, requested a temporary deviation to facilitate necessary bridge maintenance.

Under this temporary deviation the SR1A Bridge may remain in the closed position from 7 a.m. through 5 p.m. on September 15, 2009. Vessels that can pass under the bridge without a bridge opening may do so at all times.

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

Dated: August 27, 2009.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9-21560 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2009-0735]

Drawbridge Operation Regulations; Hackensack River, Jersey City, NJ, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Witt Penn Bridge at mile 3.1, across the Hackensack River, at Jersey City, New Jersey. Under this temporary deviation the Witt Penn Bridge may remain in the closed position for 45 days to facilitate necessary bridge maintenance.

DATES: This deviation is effective from September 8, 2009 through October 22, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0735 and are available online at www.regulations.gov, inserting USCG-2009-0735 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Witt Penn Bridge, across the Hackensack River at mile 3.1 has a vertical clearance in the closed position of 35 feet at mean high water and 40 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723.

The waterway has seasonal recreational vessels, and commercial vessels of various sizes.

The owner of the bridge, New Jersey Department of Transportation, requested a temporary deviation to facilitate the replacement of sheaves and wire ropes at the bridge.

Under this temporary deviation the Witt Penn Bridge, mile 3.1, across the Hackensack River may remain in the closed position for bridge maintenance from September 8, 2009 through October 22, 2009. Vessels that can pass under the bridge without a bridge opening may do so at all times. This deviation has been coordinated with the waterway users.

The contractor will have a crane barge located at the bridge. The crane barge will move out of the main channel upon request after at least a 9 hour advance notice is given by calling the bridge at 201-795-0631.

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

Dated: August 27, 2009.

Gary Kasso,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E9-21561 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0595]

RIN 1625-AA00

Safety Zone; Munitions and Explosives of Concern (MEC); Seal Island, ME

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a permanent safety zone around Seal Island, Maine from the shoreline out to the 60 foot depth curve. This safety zone prohibits persons and vessels from entering the designated area around Seal Island unless authorized by the Coast Guard Captain of the Port Northern New England. This safety zone is necessary to provide for the safety of life on the navigable waters around Seal Island by protecting mariners from the hazards of Munitions

and Explosives of Concern (MEC) found in the area.

DATES: This interim rule is effective September 8, 2009. Comments and related material must reach the Coast Guard on or before December 7, 2009. Requests for public meetings must be received by the Coast Guard on or before September 30, 2009.

ADDRESSES: You may submit comments identified by docket number USCG-2009-0595 using any one of the following methods:

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

(2) *Fax:* 202-493-2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Chief Petty Officer Randy Bucklin, Coast Guard Sector Northern New England, Waterways Management Division; telephone 207-741-5440, e-mail Randy.Bucklin@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0595), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-0595" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-0595" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy

Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before September 30, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this interim 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 "impractical, 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 a notice and comment period would be impractical due to the time needed to conduct a notice and comment period is contrary to the immediate need to implement this safety zone because of the imminent hazards posed by the Munitions and Explosives of Concern (MEC). Further, the expeditious implementation of this rule is in the public interest because it will help ensure the safety of those anchoring, fishing and other users of the waterway from the dangers of the MEC.

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**. As noted above, the Coast Guard finds that it is both impractical and contrary to public interest to delay the effective date of this rule for 30 days after publication. Immediate action is needed in order to ensure the safety of those anchoring, fishing, and otherwise using the waterway. In addition to publication in the **Federal Register**, the Coast Guard will announce the creation of this safety zone through local notice to mariners, marine information broadcasts and outreach to partner agencies in the area.

Background and Purpose

Seal Island located to the east of Matinicus Island off of the coast of Maine was used as an aerial bombing

and target range by the United States Government. The use as a bombing and target range ceased; however, recent exploration of the island and the surrounding waters led to the discovery of various munitions and explosives of concern that present safety hazards to those who may come in contact with them. Some of these MECs are located on Seal Island as well as in the shallow water immediately surrounding it. A danger zone currently exists around the island however it is only enforced during times of active aerial bombing exercises which no longer occur. The regulation for the danger zone can be found in 33 CFR 334.10.

This regulation will establish a fixed safety zone around the perimeter of the affected portions of Seal Island out to the 60 foot depth curve so as to ensure mariners do not come into close proximity with MECs near Seal Island. This safety zone is necessary to protect vessels and persons from the hazards associated with MEC.

Discussion of Rule

This rule creates the following safety zone for: "Seal Island Munitions and Explosives of Concern (MEC)." The safety zone is for all navigable waters of the Gulf of Maine in the vicinity of Seal Island, in approximate location latitude 43°53'00" N, longitude 068°44'00" W, extending from the shoreline out to the 60 foot depth curve. The 60 foot curve can be found on various nautical charts and is readily apparent on NOAA Chart 13303, Approaches to Penobscot Bay.

Entry into these zones by any person or vessel will be prohibited unless specifically authorized by the Captain of the Port Northern New England, or his designated representatives. Persons desiring to enter the safety zone may request permission to enter from the Coast Guard Captain of the Port via VHF Channel 16 or by contacting the Sector Northern New England Command Center at (207) 741-5465.

The Coast Guard advises that entry into, transiting, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port Northern New England or his designated representatives.

The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Northern New England to act on his behalf.

Regulatory Analyses

We developed this interim 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.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: the safety zone will cover only a small portion of the navigable waters around Seal Island allowing vessels to operate in all other portions of the approaches to Penobscot Bay. In addition, vessels may be authorized to enter the zone with permission of the Captain of the Port Northern New England.

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. 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit, fish, dive, or anchor in a portion of the Gulf of Maine around Seal Island.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the safety zone and operate in all other portions of the approaches to Penobscot Bay in the Gulf of Maine. Before the effective period, we

will issue maritime advisories widely available to users of the waterway transiting in the vicinity of Seal Island.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of safety zones. An environmental analysis checklist and a categorical exclusion determination will be available for review 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, and 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. 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.180 to read as follows:

§ 165.180 Safety Zone; Seal Island, Maine

(a) *Location.* The following area is a safety zone: All navigable waters of the Gulf of Maine in the vicinity of Seal Island, Maine in approximate location latitude 43°53'00" N, longitude 068°44'00" W, extending from the shoreline of Seal Island out to the 60 foot depth curve as indicated on

nautical charts. Note that the 60 foot depth curve is readily identifiable on NOAA chart 13303 (Approaches to Penobscot Bay).

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

(2) Entry into, transiting, diving, dredging, dumping, fishing, trawling, conducting salvage operations, remaining within or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port Northern New England or his designated representatives.

(3) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Northern New England to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone may contact the Captain of the Port Northern New England or his designated representative at the Coast Guard Sector Northern New England Command Center via VHF Channel 16 or by phone at (207) 741-5465 to request permission.

(5) Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the Captain of the Port Northern New England or his designated representatives.

Dated: July 15, 2009.

J.B. Mcpherson,

Captain, U. S. Coast Guard, Captain of the Port, Sector Northern New England.

[FR Doc. E9-21570 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0383]

RIN 1625-AA00

Safety Zone; Paddle for Clean Water; San Diego; CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon the navigable waters of the Pacific Ocean, San Diego, CA, in support of a paddling regatta near the Ocean Beach Pier. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from

entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective on September 13, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2009-0383 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-0383 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, Coast Guard; telephone 619-278-7262, e-mail Shane.E.Jackson@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 29, 2009 we published a notice of proposed rulemaking (NPRM) entitled Safety zone; Paddle for Clean Water; San Diego; California in the *Federal Register* (74 FR 30991). We received 0 comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Surfrider Foundation San Diego Chapter is sponsoring the Paddle for Clean Water. The event will consist of 900 to 1000 participants paddling around the Ocean Beach Pier. The sponsor will provide rescue vessels, as well as perimeter safety boats for the duration of this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced on September 13, 2009 from 9 a.m. to 4 p.m. The limits of the safety zone will be as follows:

32°45.00' N, 117°15.12' W;
32°45.10' N, 117°15.30' W;
32°44.55' N, 117°15.38' W;

32°44.43' N, 117°15.19' W; along the shoreline to

32°45.00' N, 117°15.12' W.

This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. This rule involves establishment of a safety zone. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary zone § 165.T11–201 to read as follows:

§ 165.T11–201 Safety zone; Paddle for Clean Water; San Diego; California

(a) *Location.* The limits of the safety zone will be as follows:

32°45.00' N, 117°15.12' W;
32°45.10' N, 117°15.30' W;
32°44.55' N, 117°15.38' W;
32°44.43' N, 117°15.19' W; along the shoreline to
32°45.00' N, 117°15.12' W.

(b) *Enforcement Period.* This section will be enforced on September 13, 2009 from 9 a.m. to 4 p.m. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

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

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Command Center (COMCEN). The COMCEN may be contacted on VHF-FM Channel 16 or (619) 278-7033.

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

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

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: August 18, 2009.

D.L. Leblanc,

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

[FR Doc. E9-21439 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-36 and CP2009-55; Order No. 279]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 16 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective September 8, 2009 and is applicable beginning August 17, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 39122 (August 5, 2009).

- I. Introduction
- II. Background
- III. Comments
- IV. Errata
- V. Commission Analysis
- VI. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 16 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 16 to the Competitive Product List.¹ The Postal Service asserts that the Priority Mail Contract 16 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009-36.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-55.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the contract which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;² (2) requested changes in the Mail Classification Schedule product list;³ (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁴ and (4) certification of compliance with 39 U.S.C. 3633(a).⁵ The Postal Service also references Governors’ Decision 09-6, filed in Docket No. MC2009-25, as authorization of the new product. Notice at 1.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional

costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. Request, Attachment C, at 1. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.*, Attachment D.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer’s name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.* at 2-3.

In Order No. 260, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁶

III. Comments

Comments were filed by the Public Representative.⁷ No comments were submitted by other interested parties.

The Public Representative states that each “element of 39 U.S.C. 3633(a) appears to be met by Priority Mail Contract 16. *Id.* at 2. On the other hand, he observes “it is not clear that the * * * justification of this contract * * * comports with the requirements of 3632(b)(3).” *Id.* at 3. He submits that the term of the contract is ambiguous, particularly because the provision stating that the contract “shall expire one year from the effective date” is at odds with other clauses for annual adjustments. *Id.* at 3. While recognizing the Governors’ preapproved pricing shell, he also contends that “the contract expiration must be established definitively since it is an essential component of the contract’s classification as ‘a product.’” *Id.*

The Public Representative notes that the Postal Service has duties to provide packaging and labels. *Id.* at 2-3. He also points out that the “contract appears to be silent on issues such as manifesting, electronically or otherwise.” *Id.* at 3. He adds that the Postal Service’s Request at Attachment C provides a statement of support that incorrectly refers to Priority Mail Contract 14, rather than 16.

¹ Request of the United States Postal Service to Add Priority Mail Contract 16 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

² Attachment A to the Request.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ PRC Order No. 260, Notice and Order Concerning Priority Mail Contract 16 Negotiated Service Agreement, July 29, 2009 (Order No. 260).

⁷ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 16 to Competitive Product List, (Public Representative Comments). The Commission reads these comments as relating to Priority Mail Contract 16, notwithstanding inadvertent reference to Priority Mail Contract 15.

With respect to confidentiality, the Public Representative believes that “[t]o comply with Order No. 247 in Docket[s] MC2009–30 and CP2009–40, the Postal Service should include with its filing a redacted copy of the Governors’ Decision and certification.” *Id.* at 4. (Footnote omitted.)

The Public Representative concurs that the Postal Service provides adequate justification for maintaining confidentiality in this case. *Id.* at 4. Yet, he concludes that the Priority Mail Contract 16 agreement does not comport with the requirements of title 39, even though it may otherwise be appropriately classified as competitive. *Id.* at 5. He indicates, however, the contract discrepancies could be remedied. *Id.*

In response to the Public Representative’s Comments, the Postal Service filed an errata to address uncertainties or correct errors of its Request as to adding Priority Mail Contract 16 to the Competitive Product List as a separate product.⁸

IV. Errata

The Errata includes: (a) A revised contract to clarify the term intended by the parties is 3 years, instead of 1 year; (b) a revised second page, along with the other original pages, again filed under seal, and a redacted copy; and (c) a revised page that corrects a typographic error on the Request at Attachment C, so as to change the reference to Priority Mail Contract 16, instead of 14. Errata at 1. The Postal Service further replies that it complies with the Governors’ Decision requiring recitation of any postage payment method required; pointing out that since “a particular postage payment is not required, * * * none is stated.” *Id.* at 2.

V. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, the comments filed by the Public Representative, and the Errata.

Statutory requirements. The Commission’s statutory responsibilities in this instance entail assigning Priority Mail Contract 16 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act

(PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 16 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether:

[T]he Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment C, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 16 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 16 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 16

results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 16 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products’ contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 16 indicates that it comports with the provisions applicable to rates for competitive products.

Agreement duration. The Errata reconciles the apparent temporal discrepancy between the one-year term and annual adjustments, indicating that the parties had agreed to a three-year term. Regardless of the number of years, the contract still remains terminable on thirty day’s written notice by either party. *Id.* Notwithstanding that the revised pages of the contract did not appear to be jointly executed, the Commission is satisfied that the parties intend the contract’s duration to be 3 years, not one as originally filed. The Errata also addresses the Public Representative’s concerns related to the subsidiary issues raised that pertain to the contract’s duration.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Competitive Product List.

Furthermore, the Public Representative’s assessment of Order No. 247 is well-taken. Public Representative Comments at 3–4. Subsequently, the Commission issued Order No. 266, which clarified the policy regarding self-contained docket filings. See Docket No. CP2009–47, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, July 31, 2009, at 6–7 (Order No. 266). In recent filings, the Postal Service has adhered to this policy.

In conclusion, the Commission approves Priority Mail Contract 16 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

⁸Errata to Request of the United States Postal Service to Add Priority Mail Contract 16 to Competitive Contract List and Notice of Filing (Under Seal) of Corrected Contract (August 10, 2009) (Errata).

VI. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 16 (MC2009–36 and CP2009–55) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

Issued: August 17, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

- 1000 Market Dominant Product List
- First-Class Mail
 - Single-Piece Letters/Postcards
 - Bulk Letters/Postcards
 - Flats
 - Parcels
 - Outbound Single-Piece First-Class Mail
 - International
 - Inbound Single-Piece First-Class Mail
 - International
- Standard Mail (Regular and Nonprofit)
 - High Density and Saturation Letters
 - High Density and Saturation Flats/Parcels
 - Carrier Route
 - Letters
 - Flats
 - Not Flat-Machinables (NFM)/Parcels
- Periodicals
 - Within County Periodicals
 - Outside County Periodicals
- Package Services
 - Single-Piece Parcel Post
 - Inbound Surface Parcel Post (at UPU rates)
 - Bound Printed Matter Flats
 - Bound Printed Matter Parcels
 - Media Mail/Library Mail
- Special Services
 - Ancillary Services
 - International Ancillary Services

- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service
- Negotiated Service Agreements
 - HSBC North America Holdings Inc. Negotiated Service Agreement
 - Bookspan Negotiated Service Agreement
 - Bank of America Corporation Negotiated Service Agreement
 - The Bradford Group Negotiated Service Agreement
- Inbound International
 - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services
- Market Dominant Product Descriptions
 - First-Class Mail
 - [Reserved for Class Description]
 - Single-Piece Letters/Postcards [Reserved for Product Description]
 - Bulk Letters/Postcards [Reserved for Product Description]
 - Flats [Reserved for Product Description]
 - Parcels [Reserved for Product Description]
 - Outbound Single-Piece First-Class Mail International [Reserved for Product Description]
 - Inbound Single-Piece First-Class Mail International [Reserved for Product Description]
 - Standard Mail (Regular and Nonprofit) [Reserved for Class Description]
 - High Density and Saturation Letters [Reserved for Product Description]
 - High Density and Saturation Flats/Parcels [Reserved for Product Description]
 - Carrier Route [Reserved for Product Description]
 - Letters [Reserved for Product Description]
 - Flats [Reserved for Product Description]
 - Not Flat-Machinables (NFM)/Parcels [Reserved for Product Description]
- Periodicals
 - [Reserved for Class Description]
 - Within County Periodicals [Reserved for Product Description]
 - Outside County Periodicals [Reserved for Product Description]
- Package Services
 - [Reserved for Class Description]
 - Single-Piece Parcel Post [Reserved for Product Description]
 - Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]
 - Bound Printed Matter Flats [Reserved for Product Description]
 - Bound Printed Matter Parcels [Reserved for Product Description]
 - Media Mail/Library Mail [Reserved for Product Description]
- Special Services
 - [Reserved for Class Description]
 - Ancillary Services [Reserved for Product Description]
 - Address Correction Service [Reserved for Product Description]

- Applications and Mailing Permits [Reserved for Product Description]
- Business Reply Mail [Reserved for Product Description]
- Bulk Parcel Return Service [Reserved for Product Description]
- Certified Mail [Reserved for Product Description]
- Certificate of Mailing [Reserved for Product Description]
- Collect on Delivery [Reserved for Product Description]
- Delivery Confirmation [Reserved for Product Description]
- Insurance [Reserved for Product Description]
- Merchandise Return Service [Reserved for Product Description]
- Parcel Airlift (PAL) [Reserved for Product Description]
- Registered Mail [Reserved for Product Description]
- Return Receipt [Reserved for Product Description]
- Return Receipt for Merchandise [Reserved for Product Description]
- Restricted Delivery [Reserved for Product Description]
- Shipper-Paid Forwarding [Reserved for Product Description]
- Signature Confirmation [Reserved for Product Description]
- Special Handling [Reserved for Product Description]
- Stamped Envelopes [Reserved for Product Description]
- Stamped Cards [Reserved for Product Description]
- Premium Stamped Stationery [Reserved for Product Description]
- Premium Stamped Cards [Reserved for Product Description]
- International Ancillary Services [Reserved for Product Description]
- International Certificate of Mailing [Reserved for Product Description]
- International Registered Mail [Reserved for Product Description]
- International Return Receipt [Reserved for Product Description]
- International Restricted Delivery [Reserved for Product Description]
- Address List Services [Reserved for Product Description]
- Caller Service [Reserved for Product Description]
- Change-of-Address Credit Card Authentication [Reserved for Product Description]
- Confirm [Reserved for Product Description]
- International Reply Coupon Service [Reserved for Product Description]
- International Business Reply Mail Service [Reserved for Product Description]
- Money Orders [Reserved for Product Description]
- Post Office Box Service [Reserved for Product Description]
- Negotiated Service Agreements [Reserved for Class Description]
- HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]
- Bookspan Negotiated Service Agreement [Reserved for Product Description]

- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Part B—Competitive Products
- 2000 Competitive Product List
- Express Mail
- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
- Inbound International Expedited Services 1 (CP2008–7)
- Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
- Priority Mail
- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post
- Royal Mail Group Inbound Air Parcel Post Agreement
- Parcel Select
- Parcel Return Service
- International
- International Priority Airlift (PA)
- International Surface Airlift (SAL)
- International Direct Sacks—M—Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
- International Money Transfer Service
- International Ancillary Services
- Special Services
- Premium Forwarding Service
- Negotiated Service Agreements
- Domestic
- Express Mail Contract 1 (MC2008–5)
- Express Mail Contract 2 (MC2009–3 and CP2009–4)
- Express Mail Contract 3 (MC2009–15 and CP2009–21)
- Express Mail Contract 4 (MC2009–34 and CP2009–45)
- Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
- Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
- Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
- Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
- Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
- Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
- Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
- Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
- Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
- Priority Mail Contract 1 (MC2008–8 and CP2008–26)
- Priority Mail Contract 2 (MC2009–2 and CP2009–3)
- Priority Mail Contract 3 (MC2009–4 and CP2009–5)
- Priority Mail Contract 4 (MC2009–5 and CP2009–6)
- Priority Mail Contract 5 (MC2009–21 and CP2009–26)
- Priority Mail Contract 6 (MC2009–25 and CP2009–30)
- Priority Mail Contract 7 (MC2009–25 and CP2009–31)
- Priority Mail Contract 8 (MC2009–25 and CP2009–32)
- Priority Mail Contract 9 (MC2009–25 and CP2009–33)
- Priority Mail Contract 10 (MC2009–25 and CP2009–34)
- Priority Mail Contract 11 (MC2009–27 and CP2009–37)
- Priority Mail Contract 12 (MC2009–28 and CP2009–38)
- Priority Mail Contract 13 (MC2009–29 and CP2009–39)
- Priority Mail Contract 14 (MC2009–30 and CP2009–40)
- Priority Mail Contract 15 (MC2009–35 and CP2009–54)
- Priority Mail Contract 16 (MC2009–36 and CP2009–55)
- Priority Mail Contract 17 (MC2009–37 and CP2009–56)
- Outbound International
- Direct Entry Parcels Contracts
- Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
- Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
- Global Expedited Package Services (GEPS) Contracts
- GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
- Global Plus Contracts
- Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
- Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
- Inbound International
- Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
- International Business Reply Service
- Competitive Contract 1 (MC2009–14 and CP2009–20)
- Competitive Product Descriptions
- Express Mail
- [Reserved for Group Description]
- Express Mail
- [Reserved for Product Description]
- Outbound International Expedited Services
- [Reserved for Product Description]
- Inbound International Expedited Services
- [Reserved for Product Description]
- Priority
- [Reserved for Product Description]
- Priority Mail
- [Reserved for Product Description]
- Outbound Priority Mail International
- [Reserved for Product Description]
- Inbound Air Parcel Post
- [Reserved for Product Description]
- Parcel Select
- [Reserved for Group Description]
- Parcel Return Service
- [Reserved for Group Description]
- International
- [Reserved for Group Description]
- International Priority Airlift (IPA)
- [Reserved for Product Description]
- International Surface Airlift (ISAL)
- [Reserved for Product Description]
- International Direct Sacks—M—Bags
- [Reserved for Product Description]
- Global Customized Shipping Services
- [Reserved for Product Description]
- International Money Transfer Service
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at non-UPU rates)
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- International Insurance
- [Reserved for Product Description]
- Negotiated Service Agreements
- [Reserved for Group Description]
- Domestic
- [Reserved for Product Description]
- Outbound International
- [Reserved for Group Description]
- Part C—Glossary of Terms and Conditions
- [Reserved]
- Part D—Country Price Lists for International Mail [Reserved]
- [FR Doc. E9–21438 Filed 9–4–09; 8:45 am]
- BILLING CODE 7710-FW-P**
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- ENVIRONMENTAL PROTECTION AGENCY**
- 40 CFR Part 35**
- [EPA-HQ-SFUND-2009-0617; FRL-8953-8]**
- RIN 2050-AG53**
- State and Local Assistance; Technical Correction**
- AGENCY:** Environmental Protection Agency (EPA).
- ACTION:** Final rule; Technical Correction.
- SUMMARY:** On June 16, 2009, regulations to include State Response Programs and Tribal Response Programs under Section 128(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as among the Environmental Program Grants eligible for inclusion in a Performance Partnership Grant (PPG) were published. Those final rules included technical errors which this action corrects.
- DATES:** This rule is effective on September 8, 2009.
- ADDRESSES:** The mailing address of the Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response, is U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., MC 5105T, Washington, DC 20460.
- FOR FURTHER INFORMATION CONTACT:** Virginia Fornillo, Office of Solid Waste

and Emergency Response, Office of Brownfields and Land Revitalization, at (202) 566-2770 (fornillo.virginia@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5105T.

SUPPLEMENTARY INFORMATION:

I. Background

EPA's regulations implementing Performance Partnership Grants (PPGs) are found at 40 CFR 35.101, 40 CFR 35.130-35.138, 40 CFR 35.501 and 40 CFR 35.530-35.538. On June 16, 2009 (74 FR 28443) EPA published in the **Federal Register** a final rule that added State Response Programs Section CERCLA 128(a) under 40 CFR part 35 subpart A and Tribal Response Programs Section CERCLA 128(a) under 40 CFR part 35, subpart B as a PPG eligible grant programs. The rule also adds State Response Program and Tribal Response Program specific provisions to 40 CFR part 35, subparts A and B. This document corrects typographical errors in references contained in 40 CFR 35.133. Specifically, in 40 CFR 35.133, references are erroneously made to 40 CFR 35.100(b) rather than the correct citation, 40 CFR 35.101(a).

II. Administrative Procedure Act

The Administrative Procedure Act provides that matters relating to agency grants are not subject to prior notice and opportunity for comment, 5 U.S.C. 553(a)(2). Therefore, EPA is issuing these technical corrections as final rules.

III. Statutory and Executive Order Reviews

This final rule corrects a technical error and does not otherwise change the requirements in the final rule. As a technical correction, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they related to the final rule, see Section III in the **Federal Register** of June 16, 2009.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the

publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 35

Environmental protection, Air pollution control, Grant programs—environmental protection, Grant programs—Indians, Indians, Intergovernmental relations, Reporting and Recordkeeping requirements.

Dated: August 31, 2009.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

■ EPA amends 40 CFR Part 35 as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart A—[Amended]

■ 1. The authority citation for part 35, subpart A continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104-134, 110 Stat. 1321, 1321-299 (1996); Pub. L. 105-65, 111 Stat. 1344, 1373 (1997); 5. 105-276, 112 Stat. 2461, 2499 (1988).

■ 2. Section 35.133 is amended by revising paragraph (a) to read as follows:

§ 35.133 Programs eligible for inclusion.

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental programs eligible, in accordance with appropriation acts, for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (17) and (20). (Funds available from the section 205(g) State Administration Grants program (§ 35.101(a)(18)) and the Water Quality Management Planning Grant program (§ 35.101(a)(19)) and funds awarded to States under State Response Program Grants (§ 35.101(a)(20)) to capitalize a revolving loan fund for Brownfield remediation or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions may not be included in Performance Partnership Grants.)

* * * * *

[FR Doc. E9-21549 Filed 9-4-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-1986; MB Docket No. 09-96; RM-11537]

Television Broadcasting Services; Boise, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Fisher Broadcasting—Idaho TV, L.L.C. ("Fisher"), the licensee of KBCI-DT, channel 28, Boise, Idaho, requesting the substitution of channel 9 for channel 28 at Boise.

DATES: This rule is effective September 8, 2009.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-96, adopted August 31, 2009, and released September 1, 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 Idaho is amended by adding DTV channel 9 and removing DTV channel 28 at Boise.

Federal Communications Commission.

Clay C. Pendarvis

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-21597 Filed 9-4-09; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

[Docket No. NHTSA-2009-0121]

RIN 2127-AK59

Succession to the Administrator

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulation specifying the order of succession to the Administrator. We have determined at the present time that a change in the order of succession better serves the agency's mission.

DATES: *Effective Date:* This rule is effective on September 8, 2009.

FOR FURTHER INFORMATION CONTACT: You may contact Maria Arsenlis at 202-366-9153.

SUPPLEMENTARY INFORMATION: The mission of NHTSA is to save lives, prevent injuries and reduce economic costs due to road traffic crashes, through

education, research, safety standards and enforcement activity. This final rule, which amends NHTSA's regulation specifying the order of succession to the Administrator, is a matter relating to agency management or personnel. We have determined at this time that a change in the order of succession better serves the public interest and the agency's mission. The Senior Associate Administrator for Vehicle Safety is responsible for overseeing all of NHTSA's rulemaking, enforcement, and research programs, as well as NHTSA's National Center for Analysis.

Notice and the opportunity for comment are not required under the Administrative Procedure Act, and the amendment is effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(a)(2). In addition, this amendment is not subject to Executive Order 12866, the Department of Transportation's regulatory policies and procedures, or the provisions for Congressional review of final rules in Chapter 8 of Title 5, United States Code.

List of Subjects in 49 CFR Part 501

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, 49 CFR Part 501 is amended as follows:

PART 501—[AMENDED]

■ 1. The authority citation for Part 501 continues to read as follows:

Authority: 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

■ 2. In § 501.4 revise paragraph (a) to read as follows:

§ 501.4 Succession to the Administrator.

(a) The following officials, in the order indicated, shall act in accordance with the requirements of 5 U.S.C. 3346-3349 as Administrator of the National Highway Traffic Safety Administration, in the case of the absence or disability or in the case of a vacancy in the office of the Administrator, until a successor is appointed:

- (1) Deputy Administrator;
- (2) Senior Associate Administrator for Vehicle Safety;
- (3) Chief Counsel;
- (4) Senior Associate Administrator for Traffic Injury Control; and
- (5) Senior Associate Administrator for Policy and Operations.

* * * * *

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

John D. Porcari,
Deputy Secretary.

[FR Doc. E9-20695 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351-9087-02]

RIN 0648-XR43

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2009 total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 2009, through 1200 hrs, A.l.t., September 10, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 17, 2009.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-XR43, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- *Mail:* P. O. Box 21668, Juneau, AK 99802.

- *Fax:* (907) 586-7557.

- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required

fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on September 1, 2009.

NMFS has determined that approximately 476 mt of the 2009 Atka mackerel TAC for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully

utilize the 2009 TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea effective 1200 hrs, A.l.t., September 3, 2009. Pursuant to § 679.25(b), the Regional Administrator considered the following factors in reaching this decision: (1) the catch per unit of effort and the rate of harvest and, (2) the economic impacts on fishing businesses affected in the BSAI trawl limited access sector.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Atka mackerel fishery in the Eastern Aleutian District

and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 1, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 17, 2009.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 2, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9-21530 Filed 9-2-09; 4:15 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 172

Tuesday, September 8, 2009

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563-AC10

Common Crop Insurance Regulations; Apple Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Apple Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will be effective for the 2011 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business November 9, 2009 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled "Apple Crop Provisions", by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141-6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131-3055.
- *E-Mail:* DirectorPDD@rma.usda.gov.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant

consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The

provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising § 457.158, Apple Crop Insurance Provisions, to be effective for the 2011 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and should be removed in the Crop Provisions.

2. Section 1—FCIC proposes to revise the definition of “apple production” to reference “fresh apple production and processing apple production” to be consistent with the proposed changes to revise the names of the defined terms of “fresh apples” and “processing apples” to “fresh apple production” and “processing apple production.”

FCIC proposes to revise the definition of “damaged apple production” to remove the reference to “within each lot, bin, bushel, or box, as applicable.” Questions have been raised regarding whether claims for indemnity, including appraisals and quality adjustment determinations, were required to be completed for each lot, bin, bushel, or box of damaged apples rather than on a unit basis. This change is being made to clarify that damage is determined on a unit basis.

FCIC proposes to revise the name of the defined term “fresh apples” to “fresh apple production” for

clarification. FCIC also proposes to revise the definition to require insureds to certify and, if requested by their approved insurance provider, provide verifiable records to prove at least 50 percent of their fresh apple acreage was sold as fresh apples in one or more of the three most recent crop years. FCIC also proposes to revise the definition to clarify insureds must follow the recommended cultural practices generally in use for fresh apple acreage in the county as determined by agricultural experts. These revisions will help ensure processing apple production is not insured as fresh apple production.

FCIC proposes to revise the name of the defined term “processing apples” to “processing apple production” for clarification. FCIC also proposes to revise the definition to clarify processing apple production is apples from insurable acreage failing to meet the fresh apple production requirements.

FCIC proposes to revise the definition of “type” to refer to a category of apples as designated in the Special Provisions. This change is being made to allow for type changes in the future.

FCIC proposes to delete the definition of “lot.” With the removal of any reference to “lot” in the definition of “damaged apple production,” this term will no longer be needed and is no longer recognized by the apple industry.

FCIC also proposes to delete the definition of “varietal group.” With the removal of the term in the definition of “type” and section 2(b), this term will no longer be needed.

3. Section 2—FCIC proposes to revise section 2(b) to allow optional units by type as specified in the Special Provisions. Different types may have significantly different management practices, production risks and uses.

4. Section 3—FCIC proposes to add a new section 3(a) to allow the insured to select different coverage levels for all fresh apple acreage in the county and for all processing apple acreage in the county.

FCIC also proposes to revise redesignated section 3(c)(1) to revise the list of possible effects on yield potential to include all of the items currently listed in section 3(c).

FCIC proposes to revise redesignated section 3(d) to add provisions to specify if the insured fails to notify the insurance provider by the production reporting date of an event or action that occurs during the crop year that may reduce the yield potential, any loss of production from such acreage will result in an appraisal for uninsured causes. The yield used to establish the insured’s

production guarantee will be reduced for the subsequent crop year. FCIC also proposes to revise redesignated section 3(d) to remove the list of possible effects on yield potential and to add language that refers back to section 3(c)(1)–(4), which currently contains the possible effects on yield potential. Removing the list of possible effects on yield potential in redesignated section 3(d) eliminates redundancy.

5. Section 6—FCIC proposes to revise the second sentence in section 6 to clarify that only acreage qualifying as fresh apple production is eligible for the Optional Coverage for Quality Adjustment provisions contained in section 14. This revision will help ensure processing apple production is not insured or adjusted as fresh apple production.

6. Section 7—FCIC proposes to add a new section 7(d) to clarify the insured crop is apples grown for either fresh apple production or processing apple production as defined in section 1.

7. Section 11—FCIC proposes to add a new section 11(a) to clarify the insured must leave representative samples for appraisal purposes if required by the insurance provider in accordance with the Basic Provisions.

8. Section 12—FCIC proposes to revise the Basic Coverage example in section 12 and move it to follow section 12(b)(7) to be consistent with the proposed example in section 14.

FCIC proposes to remove the current section 12(d) and move the provisions to a new section 14(d). FCIC also proposes to add a new section 12(d) to state any apple production not graded prior to sale or storage will be considered as production to count. Since harvest ends the insurance period, no coverage is provided for any subsequent damage that occurs after the apple production is sold or placed in storage. Provisions have been added to make this clear.

9. Section 14—FCIC proposes to revise section 14(a) to specify that insureds who select the Optional Coverage for Quality Adjustment cannot receive less than the indemnity due under section 12.

FCIC proposes to revise section 14(b)(4) to clarify that production to count under the Optional Coverage for Quality Adjustment will include all appraised and harvested production from all of the fresh apple acreage in the unit.

FCIC proposes to revise section 14(b)(5) to clarify the percent of damaged appraised or harvested apple production is applied within the applicable unit.

FCIC proposes to revise section 14(b)(5)(v) by adding the phrase “or better” after the phrase “U.S. Fancy” to clarify if any fresh apple production is sold as U.S. Fancy or better, all such sold production will be included as production to count under the Optional Coverage for Quality Adjustment.

FCIC also proposes to add a new section 14(c) to state if any production is not graded prior to sale or storage, it will be considered as production to count. As stated above, since harvest ends the insurance period, no coverage is provided for any subsequent damage that occurs after the apple production is sold or placed in storage. Provisions have been added to make this clear.

FCIC proposes to add a new section 14(d) to add provisions that any adjustments that reduce your production to count under the Optional Coverage for Quality Adjustment will not be applied when determining production to count for actual production history (APH) purposes. These provisions were previously contained in section 12(d), but since they are applicable to the Optional Coverage for Quality Adjustment, they are more appropriately included here.

FCIC proposes to revise the example in section 14 to clarify loss calculations under the Optional Coverage for Quality Adjustment to include all appraised and harvested production for all of the unit’s fresh apple acreage.

List of Subjects in 7 CFR Part 457

Crop insurance, Apple, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2011 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.158 as follows:

a. Revise the introductory text;
b. Remove the paragraph immediately preceding section 1;

c. Add definitions in section 1 for “fresh apple production” and “processing apple production;” remove the definitions of “fresh apples,” “lot,” “processing apples,” and “varietal group;” revise the definitions of “apple production” and “type;” and amend the definition of “damaged apple production” by removing the phrase “, within each lot, bin, bushel, or box, as

applicable,” from both paragraphs (a) and (b);

d. Revise section 2(b);

e. Amend section 3 by redesignating paragraphs (a), (b), and (c) as (b), (c), and (d) respectively, and adding a new paragraph (a);

f. Revise sections 3(b)(1) and 3(c);

g. Amend section 6 by removing the phrase “Blocks of apple acreage grown for processing are” and adding the phrase “Any acreage not qualifying for fresh apple production is” in its place in the second sentence;

h. Amend section 7(b)(3) by removing the word “and” after the semicolon at the end;

i. Amend section 7(c) by removing the period at the end and replacing it with “; and”;

j. Add a new section 7(d);

k. Amend section 11 by redesignating the introductory text as paragraph (b), redesignating paragraphs (a), (b), and (c) as (1), (2), and (3) respectively, and adding a new paragraph (a);

l. Revise the Basic Coverage Example in section 12 and move it to follow section 12(b)(7);

m. Revise section 12(d);

n. Amend section 14(a) by adding at the end of the paragraph the following sentence, “Insureds who select this option cannot receive less than the indemnity due under section 12.”;

o. Amend section 14(b)(3) by removing the phrase “fresh apples” and adding the phrase “fresh apple production” in its place and removing the phrase “processing apples” and adding the phrase “processing apple production” in its place;

p. Revise section 14(b)(4);

q. Revise section 14(b)(5) introductory text;

r. Amend section 14(b)(5) by adding the word “one” after the phrase “percent for each full” in paragraphs (i), (ii), and (iii);

s. Amend section 14(b)(5)(v) by adding the phrase “or better” after the phrase “if you sell any of your fresh apple production as U.S. Fancy”;

t. Add new sections 14(c) and (d);

u. Revise the Optional Coverage for Quality Adjustment example; and
The revised and added text reads as follows:

§ 457.158 Apple crop insurance provisions.

The apple crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

1. Definitions.

Apple production. All fresh apple production and processing apple production from insurable acreage.

* * * * *

Fresh apple production. Apples: (1) That are sold, or could be sold, for consumption without undergoing any change in its basic form, such as peeling, juicing, crushing, etc.; (2) from acreage that is designated as fresh apples on the acreage report; (3) that follow the recommended cultural practices generally in use for fresh apple acreage in the county as determined by agricultural experts; and (4) you certify and, if requested by us, provide verifiable records to show at least 50 percent of the production from acreage reported as fresh apple acreage was sold as fresh apples in one or more of the three most recent crop years.

* * * * *

Processing apple production. Apples from insurable acreage failing to meet the insurability requirements for fresh apple production that are: (1) Sold, or could be sold for the purpose of undergoing a change to its basic structure such as peeling, juicing, crushing, etc.; or (2) from acreage designated as processing apples on the acreage report.

* * * * *

Type. A category of apples as designated in the Special Provisions.

2. Unit Division.

* * * * *

(b) By type as specified in the Special Provisions.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(a) You may select only one coverage level for all fresh apple acreage and only one coverage level for all processing apple acreage.

* * * * *

(c) * * *

(1) Any event or action that could impact the yield potential of the insured crop including, interplanted perennial crop, removal of trees, any damage, change in practices, or any other circumstance that may reduce the expected yield upon which the insurance guarantee is based, and the number of affected acres;

* * * * *

(d) We will reduce the yield used to establish your production guarantee based on our estimate of such event or action of any of the items listed in section 3(c)(1) through (4) as indicated below. If the event or action occurred:

(1) Before the beginning of the insurance period, we will reduce the yield used to establish your production guarantee for the current crop year as necessary. If you fail to notify us of any

circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance;

(2) Or may occur after the beginning of the insurance period and you notify us by the production reporting date, we will reduce the yield used to establish your production guarantee for the current crop year as necessary; or

(3) Or may occur after the beginning of the insurance period and you fail to notify us by the production reporting date, we will appraise your production in accordance with section 12(c)(1)(ii). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

7. Insured Crop.

* * * * *

(d) That are grown for:

- (1) Fresh apple production; or
(2) Processing apple production.

* * * * *

11. Duties In the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

12. Settlement of Claim.

* * * * *

- (b) * * *
(7) * * *

Basic Coverage example:

You have a 100 percent share in one basic unit with 10 acres of fresh apples and 5 acres of processing apples designated on your acreage report, with a 600 bushel per acre production guarantee for both fresh and processing apples, and a price election of \$9.10 per bushel for fresh apples and \$2.50 per bushel for processing apples. You harvest 5,000 bushels of fresh apples and 1,000 bushels of processing apples all grading U.S. No. 1 Processing or better. Your indemnity will be calculated as follows:

- (A) 10 acres x 600 bushels = 6,000 bushel production guarantee of fresh apples;
5 acres x 600 bushels = 3,000 bushel production guarantee of processing apples;
(B) 6,000 bushel production guarantee x \$9.10 price election = \$54,600.00 value of production guarantee for fresh apples;
3,000 bushel production guarantee x \$2.50 price election = \$7,500.00 value of production guarantee for processing apples;
(C) \$54,600.00 value of production guarantee for fresh apples +

- \$7,500.00 value of production guarantee for processing apples = \$62,100.00 total value of the production guarantee;
(D) 5,000 bushels of fresh apple production to count x \$9.10 price election = \$45,500.00 value of fresh apple production to count;
1,000 bushels of processing apple production to count x \$2.50 price election = \$2,500.00 value of processing apple production to count;
(E) \$45,500.00 value of fresh apple production to count + \$2,500.00 value of processing apple production to count = \$48,000.00 total value of production to count;
(F) \$62,100.00 total value of the production guarantee - \$48,000.00 total value of production to count = \$14,100.00 value of loss; and
(G) \$14,100.00 value of loss x 100 percent share = \$14,100.00 indemnity payment.

[End of Example]

* * * * *

(d) Any apple production not graded prior to the earlier of the time apples are placed in storage, or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count.

* * * * *

14. Optional Coverage for Quality Adjustment.

* * * * *

(b) * * *

(4) In lieu of sections 12(c)(1)(iii), (iv) and (2), the production to count will include all appraised and harvested production from all of the fresh apple acreage in the unit.

(5) If appraised or harvested fresh apple production within the applicable unit is damaged to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better the following adjustments will apply:

* * * * *

(c) Any apple production not graded prior to the earlier of the time apples are placed in storage, or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count under this option.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for APH purposes.

Optional Coverage for Quality Adjustment:

You have a 100 percent share in 10 acres of fresh apples designated on your

acreage report, with a 600 bushel per acre guarantee, and a price election of \$9.10 per bushel. You harvest 5,000 bushels of apples from your designated fresh apple acreage, but only 2,650 of those bushels grade U.S. Fancy or better. Your indemnity would be calculated as follows:

- (1) 10 acres x 600 bushels per acre = 6,000 bushel production guarantee of fresh apples;
(2) 6,000 bushel production guarantee of fresh apples x \$9.10 price election = \$54,600.00 value of production guarantee for fresh apple acreage;
(3) The value of the fresh apple production to count is determined as follows:
(i) 5,000 bushels harvested - 2,650 bushels that graded U.S. Fancy or better = 2,350 bushels of fresh apple production not grading U.S. Fancy or better;
(ii) 2,350/5,000 = 47 percent of fresh apple production not grading U.S. Fancy or better;
(iii) In accordance with section 14(b)(5)(ii): 47 percent - 40 percent = 7 percent in excess of 40 percent;
(iv) 7 percent x 3 = 21 percent;
(v) 40 percent + 21 percent = 61 percent;
(vi) 5,000 bushels harvested x .61 (61 percent) = 3,050 bushels of fresh apple production not grading U.S. Fancy or better;
(vii) 5,000 bushels harvested - 3,050 bushels of fresh apple production not grading U.S. Fancy or better = 1,950 bushels of adjusted fresh apple production to count;
(viii) 1,950 bushels of adjusted fresh apples production to count x \$9.10 price election = \$17,745.00 value of fresh apple production to count;
(4) \$54,600.00 value of production guarantee for fresh apples - \$17,745.00 value of fresh apple production to count = \$36,855.00 value of loss;
(5) \$36,855.00 value of loss x 100 percent share = \$36,855.00 indemnity payment.

[End of Example]

* * * * *

Signed in Washington, DC, on September 1, 2009.

William J. Murphy,
Manager, Federal Crop Insurance Corporation.

[FR Doc. E9-21598 Filed 9-4-09; 8:45 am]

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1485**

RIN 0551-AA72

Market Access Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and amend the regulations at 7 CFR part 1485 used to administer the Market Access Program (MAP) by updating and merging the application requirements and the activity plan requirements to reflect the Unified Export Strategy (UES) system currently in place; clarifying the eligibility of activities designed to address international market access issues; modifying the list of eligible and ineligible contributions; revising the portions of the regulation regarding evaluations, contracting procedures, and the compliance review and appeals process; eliminating the Export Incentive Program/Market Access Program (EIP/MAP) as a separate subcomponent; and making other administrative changes for clarity and program integrity.

DATES: Comments concerning this proposed rule must be received by November 9, 2009 to be assured consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *E-Mail:* podadmin@fas.usda.gov.

- *Fax:* (202) 720-9361.

- *Hand Delivery or Courier:* U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

- *U.S. Postal Delivery:* U.S. Department of Agriculture, Foreign Agricultural Service, Office of Trade Programs, Program Operations Division, Stop 1023, 1400 Independence Avenue, SW., Washington, DC 20250-1042.

Comments may be inspected in Suite 400, Portals Building, 1250 Maryland Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the

Foreign Agricultural Service (FAS) home page at: <http://www.fas.usda.gov/mos/programs/map.asp>.

FOR FURTHER INFORMATION CONTACT: Mark Slupek by phone at (202) 720-4327, by fax at (202) 720-9361, or by e-mail at: podadmin@fas.usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

On May 23, 2007, the Commodity Credit Corporation (CCC) published an advance notice of proposed rulemaking and public hearing in the **Federal Register** (72 FR 28901). This notice was intended to solicit comments on whether to amend and revise the existing MAP regulations. In addition, CCC held a public hearing on July 25, 2007, to receive oral and written comments. This proposed rule includes changes based on public comments and CCC's experience in operating the program. The following changes are proposed:

CCC proposes to add a separate paragraph to note explicitly the applicability of other Federal statutes and regulations to the activities of MAP participants. CCC also proposes to add new definitions and to delete obsolete definitions. Of note, CCC proposes to clarify the definitions of U.S. agricultural commodity, brand promotion, CCC, contribution, credit memo, expenditure, generic promotion, supergrade, and small-sized entity. CCC proposes to remove the definitions of activity plan, activity plan amendment request (APAR), deputy administrator, division director, EIP/MAP, EIP/MAP participant, eligible commodity, exported commodity, unfair trade practice, U.S. commercial entity, and U.S. industry contribution. CCC proposes to add definitions of administrative expenses or costs, approval letter, brand participant, UES Web site, FAS Web site, notification, program agreement, program year, temporary contractor, U.S. for-profit entity, and UES.

CCC proposes to modify the language that describes the application process and activity plan. CCC proposes to update and merge the list of application requirements and the activity plan requirements to better reflect the UES system that has been in place for several years.

CCC proposes to modify the lists of reimbursable and non-reimbursable activities to clarify the reimbursability of certain activities, e.g., to allow reimbursement for the use of electronic media in advertising (such as radio, television, electronic mail, Internet, telephone, text messaging, and

podcasting) and portable electronic communications devices (such as mobile phones, wireless e-mail devices, and personal digital assistants). Other clarifications address overseas office expenses, legal expenses, market research, coupons, permanent displays, subscriptions to publications, travel reimbursement, Office of Management and Budget (OMB) Circular A-133 audits, and translation of written materials. CCC also proposes to clarify that expenditures associated with educational training designed to improve market access by addressing temporary or permanent trade barriers are reimbursable. Such activities are currently allowable, but were not specifically identified in the regulation.

CCC proposes to modify the list of reimbursable activities to include development and use of Web sites; production of business cards that target a foreign audience; expenditures associated with conducting international staff conferences; expenditures related to copyright, trademark, or patent registration; leasing storage space overseas for storing program materials; and business class travel to be more consistent with the federal travel regulation.

Throughout the program's history, certain domestic administrative costs have been reimbursable for regional or national groupings of state departments of agriculture. CCC proposes to broaden this eligibility to allow for domestic administrative costs for the Intertribal Agriculture Council, which is a similar grouping of Native American and Alaskan tribes.

CCC proposes to modify the list of non-reimbursable activities to make ineligible expenditures on activities that include derogatory references or negative comparisons to other U.S. agricultural commodities and contributions to a contingency reserve. CCC also proposes to clarify that if a MAP participant discovers that MAP funds have not been spent properly, the participant has 30 days to inform CCC and repay the amount misspent.

CCC proposes to clarify, separate, and include in a new paragraph MAP contribution rules that were originally subsumed in the application process paragraph.

CCC proposes to separate existing paragraphs entitled "Financial management, reports, evaluations, and appeals" and "Miscellaneous provisions" into multiple paragraphs to provide greater clarity. CCC proposes to establish separate paragraphs to describe the compliance review and appeals processes; amendment of agreements; termination of agreements;

consequences of noncompliance with agreements; as well as new paragraphs on financial management, evaluation, information disclosure, ethical conduct, physical property, program income, and reporting. CCC proposes to extend the due date for evaluation reports and annual performance reports to 180 days following the end of a program year.

CCC proposes a new paragraph establishing new requirements for a participant to submit to CCC, for CCC's approval, a contracting plan that outlines its procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third-party offers to provide goods or services; procedures for reviewing proposals, bids, or other offers to provide goods and services; and other contracting requirements, including conflict of interest provisions that extend beyond the relevant actor's immediate family.

In addition, CCC proposes to add a paragraph requiring MAP participants that operate brand programs under MAP to establish certain operational procedures outlined in this proposed rule.

CCC also proposes to add a paragraph imposing new requirements on participants to establish and maintain a fraud prevention program and to report to CCC any allegations regarding potential fraud against the program.

Finally, CCC proposes to eliminate the EIP/MAP subcomponent, which was a part of the program limited to for-profit entities that entered into agreements with CCC. This applied when the program was available to large companies, but such companies are no longer eligible for the program.

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of Executive Order 12866 and was not reviewed by OMB. A cost-benefit assessment of this rule was not completed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule would not be retroactive.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V,

published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Assessment

CCC has determined that this proposed rule does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), 40 CFR part 1502.4, "Major Federal Actions Requiring the Preparation of Environmental Impact Statements" and the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, no environmental assessment or environmental impact statement will be prepared.

Unfunded Mandates

Although we are publishing this as a proposed rule, Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FAS has previously received approval from OMB with respect to the information collection required to support this program. The information collection is described below:

Title: Foreign Market Development Program (FMD) and Market Access Program (MAP);

OMB Control Number: 0551–0026.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at: <http://www.fas.usda.gov>.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC proposes to amend 7 CFR part 1485 as follows:

PART 1485—GRANT AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR U.S. AGRICULTURAL COMMODITIES

1. The authority citation for 7 CFR part 1485 continues to read as follows:

Authority: 7 U.S.C. 5623; 7 U.S.C. 5662–5663 and sec. 1302, Public Law 103–66, 107 Stat. 330.

2. Subpart B is revised to read as follows:

Subpart B—Market Access Program

Sec.	
1485.10	General purpose and scope.
1485.11	Definitions.
1485.12	Participation eligibility.
1485.13	Application process.
1485.14	Application review and formation of agreements.
1485.15	Operational procedures for brand programs.
1485.16	Contribution rules.
1485.17	Reimbursement rules.
1485.18	Reimbursement procedures.
1485.19	Advances.
1485.20	Employment practices.
1485.21	Financial management.
1485.22	Reports.
1485.23	Evaluation.
1485.24	Compliance reviews and notices.
1485.25	Failure to make required contribution.
1485.26	Submissions.
1485.27	Disclosure of program information.
1485.28	Ethical conduct.
1485.29	Contracting procedures.
1485.30	Property standards.
1485.31	Anti-fraud requirements.
1485.32	Program income.
1485.33	Amendment.
1485.34	Noncompliance with an agreement.
1485.35	Suspension, termination, and closeout of agreements.
1485.36	Paperwork reduction requirements.

Subpart B—Market Access Program

§ 1485.10 General purpose and scope.

(a) This subpart sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the Market Access Program (MAP).

(b)(1) In addition to the provisions of this subpart, other regulations of general application issued by the U. S. Department of Agriculture (USDA), including the regulations set forth in Chapter XXX of this title, "Office of the Chief Financial Officer, Department of Agriculture," may apply to the MAP. These include, but are not limited to:

- (i) 7 CFR part 1, subpart A—Official Records
- (ii) 7 CFR part 3—Debt Management
- (iii) 7 CFR part 15, subpart A—Nondiscrimination
- (iv) 7 CFR part 3015—Uniform Federal Assistance Regulations
- (v) 7 CFR part 3016—Uniform Administrative Requirements for

- Grants and Cooperative Agreements to State and Local Governments
- (vi) 7 CFR part 3017—Government-wide Debarment and Suspension (Nonprocurement)
 - (vii) 7 CFR part 3018—New Restrictions on Lobbying
 - (viii) 7 CFR part 3019—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations
 - (ix) 7 CFR part 3021—Government-wide requirements for drug-free workplace (financial assistance)
 - (x) 7 CFR part 3052—Audits of States, Local Governments, and Non-profit Organizations
 - (xi) 48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulations.

(2) In addition, relevant provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory provisions that are generally applicable to CCC are also applicable to the MAP and the regulations set forth in this part.

(3) MAP participants must also comply with Title VI for the Civil Rights Act of 1964 and related civil rights regulations and policies.

(c) Under the MAP, CCC may provide grants to eligible U.S. entities to conduct certain marketing and promotion activities aimed at developing, maintaining, or expanding commercial export markets for U.S. agricultural commodities and products. MAP participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. When considering eligible nonprofit U.S. trade organizations, CCC gives priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted.

(d) The MAP generally operates on a reimbursement basis.

(e) CCC's policy is to ensure that benefits generated by MAP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage. CCC also endeavors to enter into MAP agreements covering a broad array of agricultural commodity sectors. The MAP is administered by personnel of the Foreign Agricultural Service (FAS) acting on behalf of CCC.

§ 1485.11 Definitions.

For purposes of this subpart the following definitions apply:

Activity—a specific foreign market development effort undertaken by a MAP participant.

Administrative expenses or costs—expenses or costs of administering, directing, and controlling an organization that is a MAP participant that are not directly identifiable with a specific market promotion activity. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to, rent, office equipment, office supplies, office décor, office furniture, computer hardware and software, maintenance, extermination, parking, business cards);

(2) Personnel (including, but not limited to, salaries, benefits, payroll taxes, individual insurance, training);

(3) Communications (including, but not limited to, phone expenses, Internet, mobile phones, personal digital assistants, e-mail, mobile e-mail devices, postage, courier services, television, radio, walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to, planning, supervision, supervisory travel, teambuilding, recruiting, hiring);

(5) Utilities (including, but not limited to, sewer, water, energy);

(6) Professional services (including, but not limited to, accounting expenses, financial services, investigatory services).

Approval letter—a document by which CCC informs an applicant that its MAP application for a program year has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the program agreement. This letter requires a countersignature by the MAP participant before it becomes effective.

Attaché/Counselor—the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Brand participant—a small-sized U.S. for-profit entity or a non-profit U.S. agricultural cooperative that owns the brand(s) of the U.S. agricultural commodity to be promoted or has the exclusive rights to use such brand(s) and that is participating in the MAP brand promotion program of another MAP participant.

Brand promotion—an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or any activity undertaken by a MAP participant in the brand program.

CCC—the Commodity Credit Corporation, including any agency or

official of the United States delegated the responsibility to act on behalf of CCC.

Contribution—an expenditure made by a MAP participant or U.S. industry in support of an approved activity.

Credit memo—a commercial document, also known as a credit memorandum, issued by the MAP participant to a commercial entity that owes the MAP participant a certain sum. A credit memo is used when the MAP participant owes the commercial entity a sum less than the amount the entity owes the participant. The credit memo reflects an offset of the amount the MAP participant owes the entity against the amount the entity owes to the MAP participant.

Demonstration projects—activities involving the erection or construction of a structure or facility or the installation of equipment.

Expenditure—either payment via the transfer of funds or offset reflected in a credit memo in lieu of a transfer of funds.

FAS—Foreign Agricultural Service, USDA.

FAS Web site—a Web site maintained by FAS providing information on MAP. It is currently accessible at www.fas.usda.gov/mos/programs/map.asp.

Foreign third party—a foreign entity that works with a MAP participant, in accordance with an approved MAP program agreement and/or approval letter, in promoting the export of a U.S. agricultural commodity.

Generic promotion—an activity that is not a brand promotion but, rather, promotes a U.S. agricultural commodity generally.

MAP—the Market Access Program.

MAP participant or Participant—an entity that has entered into a MAP program agreement with CCC.

Market—the country or countries targeted by an activity.

Notification—a document from the MAP participant by which the MAP participant proposes to CCC changes to the activities and/or funding levels in an approved MAP program agreement and/or approval letter.

Program agreement—a document entered into between CCC and a MAP participant setting forth the terms and conditions of approved activities under MAP, including any subsequent amendments to such agreement.

Program year—Unless otherwise agreed in writing between CCC and a MAP participant, a 12-month period during which a MAP participant can undertake activities consistent with this subpart and its program agreement with CCC.

Promoted commodity—a U.S. agricultural commodity the sale of which is the intended result of a promotion activity.

Sales and trade relations expenditures (STRE)—expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips; and decorations for a special promotional occasion.

Sales team—a group of individuals engaged in an approved activity intended to result in specific sales.

Small-sized entity—a U.S. commercial entity that meets the small business size standards published at 13 CFR part 121, Small Business Size Regulations.

SRTG—the acronym for State Regional Trade Group. An SRTG is an association of State Departments of Agriculture.

Supergrade—a salary level above the reimbursable salary range generally allowable under MAP, which CCC may approve on a case by case basis. This salary level is available only for certain non-U.S. employees who direct participants' overseas offices.

Temporary contractor—a contractor, typically a consultant or other highly paid professional, that is hired on a short term basis to assist in the performance of an activity.

Trade team—a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

UES Web site—a Web site maintained by FAS through which applicants may apply online to MAP and any other USDA market promotion program. The Web site is currently accessible at <http://www.fas.usda.gov/mos/ues/unified.asp>.

Unified Export Strategy (UES)—is a standardized online Internet application developed by USDA and available for use by entities to apply to any USDA market development program.

U.S. agricultural commodity—any food, feed, fiber, forestry product, livestock, or insect of U.S. origin or fish harvested from a U.S. aquaculture farm or harvested by a vessel as defined in Title 46 of the United States Code, in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof, excluding tobacco. An agricultural commodity shall be considered to be U.S. origin if it is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

USDA—the United States Department of Agriculture.

U.S. for-profit entity—a firm, cooperative, association, or other entity organized or incorporated, located and doing business for profit in the United States and engaged in the export or sale of a U.S. agricultural commodity.

§ 1485.12 Participation eligibility.

To participate in the MAP, an entity shall be:

- (a) A nonprofit U.S. agricultural trade organization;
- (b) A nonprofit SRTG;
- (c) A nonprofit U.S. agricultural cooperative; or
- (d) A State agency.

§ 1485.13 Application process.

(a) *General application requirements.* CCC will periodically publish a Notice in the **Federal Register** that it is accepting applications for participation in MAP. Applications shall be submitted in accordance with the terms and requirements specified in the Notice and in these regulations. Applicants are encouraged to submit a UES through the UES Internet Web site, but are not required to do so. Applicants may apply to conduct a generic promotion program, a brand promotion program that provides MAP funds to brand participants for branded promotion, or both.

(1) Applicant and program information.

- (i) All applications shall contain:
 - (A) The name, address, and Internet location of the home page of the applicant organization;
 - (B) The name of the applicant's Chief Executive Officer;
 - (C) The name, telephone number, fax number, and e-mail address of the applicant's primary contact person;
 - (D) The name(s) of the person(s) responsible for managing the proposed program;

(E) A description of the applicant organization, including the type of organization of the applicant (e.g., nonprofit SRTG), its mission, and the statutory authorities by which it is constituted and under which it operates, if applicable;

(F) Tax exempt identification number of the applicant, if applicable;

(G) Beginning and ending dates for proposed program year (mm/dd/yy–mm/dd/yy);

(H) Dollar amount of CCC resources requested for generic activities;

(I) Dollar amount of CCC resources requested for brand activities;

(J) Percentage of CCC resources requested for brand activities that will be made available to small-sized entities;

(K) Total dollar amount of CCC resources requested;

(L) Percentage of CCC resources requested for general administrative expenses;

(M) A Dun and Bradstreet DUNS number for the applicant;

(N) A description of the applicant organization's membership and membership criteria;

(O) A list of organizations affiliated with the applicant, including parent organizations, subsidiaries, and partnerships;

(P) A description of the applicant's management and administrative capability;

(Q) A description of the applicant's prior export promotion experience;

(R) Value, in U.S. dollars, of proposed contributions from the applicant;

(S) The applicant's proposed contribution stated as a percentage of the total dollar amount of CCC resources requested; and

(T) Value, in U.S. dollars, of proposed contributions from other sources.

(ii) [Reserved]

(2) Program justification.

(i) All applications shall contain:

(A) A description of the promoted U.S. agricultural commodity(s), its harmonized system code, the applicable commodity aggregate code (available from the UES Web site) and the percentage of U.S. origin content by weight, exclusive of added water;

(B) A description of the anticipated supply and demand situation for the promoted U.S. agricultural commodity(s);

(C) The volume and value of exports of the promoted U.S. agricultural commodity(s) to the targeted markets for the most recent 3-year period;

(D) If the proposal is for 2 or more years, an explanation why the proposal should be funded on a multi-year basis; and

(E) A certification and, if requested by CCC, a written explanation supporting the certification that any funds received will supplement, but not supplant, any private or third-party funds or other contributions to program activities. An explanation, if one is requested, shall indicate why the applicant is unlikely to carry out the activities without Federal financial assistance. In determining whether Federal funds would supplement or supplant private or third-party funds or contributions, CCC will consider the applicant's prior overall marketing budget in the MAP program from year-to-year, variations in promotional strategies within a country, and new markets.

(ii) [Reserved]

(3) Proposed program's strategic plan.

(i) All applications shall include a strategic plan that contains:

(A) A description of overall long term strategic goals to be advanced by the proposed activities for the ensuing 3–5 years;

(B) An explanation of the organization's strategic planning process and identification of priority target markets, including a summary of proposed budgets by country and commodity aggregate code;

(C) A description of the world market situation for the exported U.S. agricultural commodity(s);

(D) A description of competition from other exporters;

(E) A statement of goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals;

(F) For each country, 5 years or as many years as are available of:

(1) Historical U.S. export data;

(2) U.S. market share; and

(3) MAP funds received by the applicant;

(G) For each target country, 3 years of projected U.S. export data and U.S. market share;

(H) Country strategy, including market constraint(s) impeding U.S. exports (e.g., trade barriers) or opportunities present and the strategy proposed to overcome constraints or take advantage of the opportunities, previous activities in the country, and the projected impact of the proposed program on U.S. exports;

(I) A justification for any proposed overseas office, including a staffing plan listing job titles, position descriptions, salary ranges, any request for approval of supergrade salaries, and an itemized administrative budget;

(J) A description of any demonstration projects, if applicable;

(K) Data summarizing the applicant's historical and projected exports, market share, and MAP budgets of the promoted U.S. agricultural commodity(s);

(L) A written presentation of all proposed activities including:

(1) A short description of the relevant market constraint or opportunity;

(2) A budget for each proposed activity, identifying the source of funds; and

(M) An evaluation plan setting forth specific goals and benchmarks set at regular intervals to be used to identify results against identified constraints and opportunities and to measure progress made in the target market. Evaluation of a proposed MAP program's effectiveness will depend on a clear statement by the applicant of goals, method of achievement, and expected results of

programming at regular intervals. The overall goal of the MAP and of individual participants' programming is to achieve or maintain sales that would not have occurred in the absence of MAP funding. A MAP participant may modify and resubmit this plan for re-approval at any time during the program year.

(ii) Applications for brand promotion assistance shall also include in their strategic plans:

(A) A description of how the brand promotion program will be publicized to U.S. industry; and

(B) The criteria that will be used to allocate funds to U.S. for-profit entities.

(b) CCC may request any additional information that it deems necessary to evaluate an application, including, but not limited to, performance measurement information.

(c) Special rules governing demonstration projects funded with CCC resources.

(1) CCC will consider proposals for demonstration projects, provided:

(i) No more than one such demonstration project per constraint is undertaken within a market;

(ii) The constraint to be addressed in the target market is a lack of technical knowledge or expertise;

(iii) The demonstration project is a practical and cost effective method of overcoming the constraint; and

(iv) A third-party must participate in such project through a written agreement.

§ 1485.14 Application review and formation of agreements.

(a) General. CCC will, subject to the availability of funds, approve those applications that it considers to present the best opportunity for developing, maintaining, or expanding export markets for U.S. agricultural commodities. The selection process, by its nature, involves the exercise of judgment. CCC's choice of participants and proposed promotion projects requires that it consider and weigh a number of factors, some of which cannot be mathematically measured—e.g., market opportunity, market strategy, and management capability. CCC may require that an applicant participate in the MAP through another MAP participant or applicant.

(b) Application review criteria. In assessing the likelihood of success of the applications it receives and deciding which it will approve, CCC will follow results-oriented management principles and consider the following criteria:

(1) The effectiveness of program management;

(2) Soundness of accounting procedures;

(3) The nature of the applicant organization, with preference given to those organizations with the broadest base of producer representation and affiliated industry participation;

(4) Prior export promotion experience;

(5) Appropriateness of staffing;

(6) Adequacy of the applicant's strategic plan in the following categories;

(i) Description of target market conditions;

(ii) Description of, and plan for addressing, market constraints and opportunities;

(iii) Breadth of industry participation in strategic planning process;

(iv) Strategic prioritization identified in proposed plan;

(v) Export volume and value and market share goals in each target country;

(vi) Description of evaluation plan and suitability of the plan for performance measurement; and

(vii) Past program results and/or evaluations, including program success stories.

(c) Allocation factors. CCC determines which applications to approve and develops preliminary recommended funding levels for each approved application based on the following factors, in addition to those in paragraph (b) of this section. CCC determines final funding levels after allocating available funds to approved applications on the basis of criteria that will be fully described in each program year's MAP announcement in the **Federal Register**:

(1) Size of the budget request in relation to projected value of exports;

(2) Where applicable, size of the budget request in relation to actual value of exports in prior years;

(3) Where applicable, participant's past projections of exports compared with actual exports;

(4) Level of contributions by the applicant and by all other sources;

(5) Market share goals in target country(ies);

(6) The percentage by weight, exclusive of added water, of U.S. agricultural commodities contained in the promoted products;

(7) The degree of value-added processing in the United States;

(8) General administrative and overhead costs compared to direct promotional costs; and

(9) In the case of a brand promotion program, the percentage of the budget that will be made available to small-sized entities as a means of providing priority assistance to such entities.

(d) Approval decision.

(1) CCC will approve those applications that it determines best

satisfy the criteria and factors specified above.

(2) Notification of decision. CCC will notify each applicant in writing of the final disposition of its application.

(e) Formation of agreements. CCC will send a program agreement (or amendment to an existing program agreement), an approval letter, and a signature card to each approved applicant. The program agreement or amendment and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a MAP participant's program, including any requirements with respect to contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment must so indicate by having its Chief Executive Officer (CEO) or designee sign the program agreement or amendment and submit it to CCC. Final agreement shall occur when the program agreement or amendment is signed on behalf of CCC.

(f) Signature cards. The MAP participant shall designate at least two individuals in its organization to sign program agreements, reimbursement claims, and advance requests. The MAP participant shall submit the signature card signed by those designated individuals and by the participant's CEO to CCC. The participant shall immediately notify CCC of any changes in signatories and shall submit a revised signature card accordingly.

(g) UES ID and passwords. CCC will provide each MAP participant with IDs and passwords for the UES website, as necessary. MAP participants shall protect these IDs and passwords in accordance with USDA's information technology policies that CCC will provide to MAP participants. MAP participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information or a person who is not authorized gains such information.

(h) A MAP participant through which small-sized U.S. for-profit entities are participating in the MAP program shall obtain annual certifications from all such entities that they are small-sized entities as defined in these regulations. The participant shall retain these certifications in accordance with the recordkeeping requirements of this subpart.

(i) Changes to activities and funding.

(1) Adding a new activity.

(i) A MAP participant may not add a new activity to its approved MAP program without first obtaining CCC written approval of such change. To

request approval of such change, the MAP participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and proposed activity strategic plan similar to the program justification and proposed program's strategic plan required in new applications. The notification shall contain the activity description, the proposed budget, and a justification of transfer of funds.

(iii) After receipt of the notification, CCC will inform the MAP participant in writing whether the requested change is approved.

(2) Deleting or modifying existing activities and funding levels.

(i) A MAP participant may make adjustments to its existing, approved activities and/or funding levels without prior approval of CCC, only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. However, a MAP participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than \$10,000 or 20 percent of the approved funding level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change. If CCC does not disapprove of the proposed increase in funding level within 15 days, then the MAP participant may so adjust the level.

(ii) A notification of a modified or deleted activity shall contain the activity description, the proposed budget, and a justification of transfer of funds, if applicable.

(iii) A notification of changes to the approved funding levels of approved activities shall contain the activity description, the existing funding level, the proposed funding level, and a justification for transfer of funds, if applicable.

§ 1485.15 Operational procedures for brand programs.

(a) Where CCC approves an application by a MAP participant to run a brand promotion program that will include third party brand participants, the MAP participant shall establish brand program operational procedures. The MAP participant annually shall submit to CCC for approval, not later than 21 days prior to signing participation agreements with third party brand participants, its proposed brand program operational procedures for such program year. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility

requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements.

(b) The MAP participant shall not enter into any participation agreements with third party brand participants nor shall it implement any MAP brand activities for the applicable program year unless and until CCC has communicated in writing its approval of the proposed operational procedures to the MAP participant.

(c) Participation agreements between MAP participants and third party brand participants. Where CCC approves a MAP participant's application to run a brand promotion program that will include third party brand participants, the MAP participant shall enter into participation agreements with third party brand participants. These agreements must:

(1) Specify a time period for such third party brand promotion and require that all third party brand promotion expenditures be made within the MAP participant's approved program year;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for activities approved in the third party brand participant's activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures, and documentation requirements;

(5) Include a written certification by the third party brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require that all product labels, promotional material, and advertising will identify the origin of the U.S. agricultural commodity as "Product of the U.S.," "Product of the U.S.A.," "Grown in the U.S.," "Grown in the U.S.A.," "Made in America" or other U.S. regional designation if approved in advance by CCC; that such origin identification will be conspicuously displayed; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/8 inch (.42 centimeters) in height based on the lower case letter "o". A MAP participant may request an exemption from this requirement on a case-by-case basis. All such requests shall be in writing and include justification satisfactory to CCC that this labeling

requirement would hinder a MAP participant's promotional efforts. CCC will determine, on a case by case basis, whether sufficient justification exists to grant an exemption from the labeling requirement;

(7) Include a written certification by the third party brand participant that it is a small-sized entity as defined in this subpart;

(8) Require that the third party brand participant submit to the MAP participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities; and

(9) Require the third party brand participant to maintain all original records and documents relating to program activities for 5 calendar years following the end of the applicable program year and make such records and documents available upon request to authorized officials of the U.S. Government.

(d) MAP participants may not provide assistance to a single company, including a company reincorporated or re-organized under the same or different name if the reincorporated or re-organized company is substantially similar to the pre-existing company, for brand promotion in a single country for more than 5 years. Such 5 years do not need to be consecutive. Such 5-year period shall not begin prior to the 1994 program year or the brand participant's first program year, whichever is later. In limited circumstances, CCC may waive the 5-year limitation if CCC determines that further assistance is in the best interests of the MAP. CCC shall have the discretion to decide whether a reincorporated or re-organized company is substantially similar to the pre-existing company for purposes of applying this 5-year rule.

§ 1485.16 Contribution rules.

(a) In MAP generic promotion programs, a MAP participant shall contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources to be provided by CCC for all generic promotion activities proposed to be undertaken by the participant.

(b) In MAP brand promotion programs, a brand participant shall contribute at least 50 percent of the total eligible expenditures made on each approved brand promotion.

(c) A MAP participant must use its own funds and may not use MAP program funds to pay any administrative costs of the MAP participant's U.S. office(s), including

legal fees, except as set forth in this subpart.

(d) Eligible contributions.

(1) In calculating the amount of contributions that it will make, and the contributions that the U.S. industry (including expenditures to be made by entities in the applicant's industry in support of the entities' related promotion activities in the markets covered by the applicant's application) or State agency will make, the MAP applicant may include the costs listed under paragraph (d)(2) of this section if:

(i) Expenditures will be made in furtherance of an approved activity, and

(ii) The contributor has not been and will not be reimbursed by any source for such costs.

(2) Subject to paragraphs (c) and (d)(1) of this section, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) The cost of seasonal greeting cards;

(ix) Fees for office parking;

(x) The cost of subscriptions to publications;

(xi) The cost of activities conducted overseas;

(xii) Credit card fees;

(xiii) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with program agreement or regulatory requirements;

(xiv) The cost of giveaways, awards, prizes and gifts;

(xv) The cost of product samples;

(xvi) Fees for participating in U.S. Government activities;

(xvii) The cost of air and local travel in the United States;

(xviii) Payment of employee's or contractor's share of personal taxes;

(xix) STRE in the United States and the cost associated with trade shows, seminars, and entertainment conducted in the United States;

(xx) Other administrative expenses (e.g., supervisory travel from the U.S. to an overseas office); and

(xxi) The cost of any activity expressly listed as reimbursable in this subpart.

(3) The following are not eligible contributions:

(i) Any portion of salary or compensation of an individual who is

the target of an approved promotional activity;

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the participant organization (sometimes referred to in the industry as "backsell");

(iii) Any land costs other than allowable costs for office space;

(iv) Depreciation;

(v) The cost of refreshments and related equipment provided to office staff;

(vi) The cost of insuring articles owned by private individuals;

(vii) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(viii) The cost of product development, product modifications, or product research;

(ix) Slotting fees or similar sales expenditures;

(x) Membership fees in clubs and social organizations; and

(xi) Any expenditure for an activity prior to CCC's approval of that activity.

(4) CCC shall determine, at CCC's discretion, whether any cost not expressly listed in this section may be included by the MAP participant as an eligible contribution.

§ 1485.17 Reimbursement rules.

(a) A MAP participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was made in furtherance of an approved activity; and

(2) The participant has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraph (a) of this section, CCC will reimburse, in whole or in part, the cost of:

(1) Production and placement of advertising, in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts. Electronic media includes, but is not limited to, radio, television, electronic mail, internet, telephone, text messaging, and podcasting;

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials;

(3) Direct mail advertising;

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of promotional samples;

(5) Temporary displays and rental of space for temporary displays;

(6) Expenditures, other than travel expenditures, associated with retail, trade, consumer exhibits and shows,

seminars, and educational training, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials;

(7) International air travel, not to exceed the full fare economy rate, or other means of international transportation and per diem, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304), for no more than two representatives of a single brand participant to exhibit their company's products at a foreign trade show;

(8) Subscriptions to publications that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the participant;

(9) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of discrete promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars;

(10) Giveaways, awards, prizes, gifts and other similar promotional materials, subject to such reimbursement limitation as CCC may, from time to time, determine and announce in writing to all MAP participants and on the FAS Web site;

(11) The design and production of packaging, labeling or origin identification, to be used during the program year in which the expenditure is made, if such packaging, labeling or origin identification is necessary to meet the importing requirements of a foreign country;

(12) The design, production, and distribution of coupons;

(13) An audit of a MAP participant as required by the applicable parts of this title if the MAP is the MAP participant's largest source of Federal funding;

(14) The translation of written materials as necessary to carry out approved activities; and

(15) Expenditures associated with developing, updating, and servicing Web sites on the Internet that clearly target a foreign audience.

(c) Subject to paragraph (a) of this section, but for generic promotion activities only, CCC will also reimburse, in whole or in part, the cost of:

(1) Compensation and allowances for housing, educational tuition, and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas, except CCC will not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of

the level of a GS-15 Step 10 salary for U.S. Government employees, and

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel;

(2) Approved supergrade salaries for non-U.S. citizens and non-U.S. contractors;

(3) Compensation of non-U.S. citizen staff employees or non-U.S. contractors subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC will not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan, except for approved supergrades, or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels, which the MAP participant shall document by a salary survey or other mean, except for approved supergrades;

(4) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors that conforms to a change in FSN salary plans, effective as of the date of such change;

(5) Accrued annual leave as of the time employment is terminated or as of such time as required by local law;

(6) Overtime paid to clerical staff;

(7) Temporary contractor fees, except CCC will not reimburse any portion of any such fee that exceeds the daily gross salary of a GS-15, Step 10 for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate;

(8) International travel expenses, including passports, visas and inoculations, except that CCC generally will not reimburse any portion of air travel in excess of the full fare economy rate or when the participant fails to notify the Attaché/Counselor in the destination country in advance of the travel, unless the CCC determines it was impractical to provide such notice. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date. In very limited circumstances, CCC will reimburse air travel up to the business class rate (*i.e.*, a premium class rate other than the first class rate). CCC will, from time to time, determine a policy regarding the appropriate

circumstances and announce that policy in writing to all MAP participants and on the FAS web site;

(9) Per diem, except that CCC will not reimburse per diem in excess of the rates allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304);

(10) Automobile mileage at the local U.S. Embassy rate or rental cars while in travel status;

(11) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 301 through 304);

(12) Organization costs for overseas offices approved in MAP program agreements. Such costs include incorporation fees, brokers' fees, fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums, and routine accounting and legal services required to maintain the overseas office;

(13) The purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least 1 year, such as furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, computer hardware and software, and portable electronic communications devices (including mobile phones, wireless e-mail devices, personal digital assistants);

(14) Such premiums for health or accident insurance and other benefits for foreign national employees that the employer is required by law to pay;

(15) Accident liability insurance premiums for facilities used jointly with third-party participants for MAP activities or for travel of non-MAP participant personnel;

(16) Market research, including research to determine the types of products that are desired in a market;

(17) Independent evaluations or audits, if not otherwise required by CCC, to ensure compliance with program agreement or regulatory requirements;

(18) Legal fees to obtain advice on the host country's labor laws;

(19) Employment agency fees;

(20) STRE;

(21) Educational travel of dependent children, visitation travel, rest and recuperation travel, home leave travel, emergency visitation travel for U.S. overseas employees allowed under the Foreign Affairs Manual published by the U.S. Department of State;

(22) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles;

(23) Domestic administrative support expenses for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council;

(24) Expenditures associated with conducting international staff conferences;

(25) Travel expenditures associated with trade shows, seminars, educational training, international staff conferences conducted outside of the United States, and meetings of international organizations conducted in the United States;

(26) Approved demonstration projects;

(27) Expenditures related to copyright, trademark, or patent registration, including attorney fees;

(28) Rental or lease expenditures for storage space for program-related materials;

(29) Business cards that target a foreign audience;

(30) Expenditures associated with developing, updating, and servicing web sites on the Internet that contain a message related to exporting or international trade; and

(31) Expenditures associated with educational training designed to improve market access by addressing market constraints, such as temporary or permanent trade barriers.

(d) A generic promotion activity may include the promotion of a foreign brand if the foreign brand uses the promoted U.S. agricultural commodity from multiple U.S. suppliers and is the primary market access to the targeted market for the U.S. agricultural commodity. A generic promotion activity may also involve the use of specific company names, logos or brand names. However, in that case, the MAP participant must ensure that all U.S. companies seeking to promote such U.S. agricultural commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme and style and is subordinate to the promotion of the generic theme.

(e) CCC will not reimburse any cost of:

(1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;

(2) Expenses, fines, settlements, judgments or payments relating to legal suits, challenges or disputes;

(3) The design and production of packaging, labeling or origin identification, except as specifically allowed in this subpart;

(4) Product development, product modification or product research;

(5) Product samples;

(6) Slotting fees or similar sales expenditures;

(7) The purchase of, construction of, or lease of space for permanent, non-mobile displays, *i.e.*, displays that are constructed to remain permanently in the same location beyond one program year. However, CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case basis, if the participant sought and received prior approval from CCC of such construction or purchase;

(8) Rental, lease or purchase of warehouse space, except for storage space for program-related material;

(9) Coupon redemption or price discounts;

(10) Refundable deposits or advances;

(11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of the limitation described in this subpart;

(12) Alcoholic beverages that are not an integral part of an approved promotional activity;

(13) The purchase, lease (except for use in authorized travel status) or repair of motor vehicles;

(14) Travel of applicants for employment interviews;

(15) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if CCC determines that such a review is needed in order to confirm past or to ensure future program agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(18) Goods, services and salaries of personnel provided by U.S. industry or foreign third-party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds;

(21) Fees for participating in U.S. Government sponsored activities, other than trade fairs and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or

marketing nature or that are not relevant to the approved activities of the MAP participant;

(26) Home office domestic administrative expenses, including communication costs;

(27) Any expenditure on an activity that includes any derogatory reference or negative comparison to other U.S. agricultural commodities;

(28) Any expenditure on an activity that contradicts U.S. foreign policy;

(29) Payment of U.S. and foreign employees' or contractors' share of personal taxes, except where a foreign country's laws require the MAP participant to pay such employees' or contractors' share;

(30) Any expenditure made for an activity prior to CCC's approval of that activity; and

(31) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening.

(f) Special rules for approval of supergrades.

(1) With respect to individuals who are not U.S. citizens and who are hired by MAP participants either as employees or contractors, ordinarily, CCC will not reimburse any portion of such individual's compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan applicable to the country in which the employee or contractor works. However, a MAP participant may seek a higher level of reimbursement for a non-U.S. citizen employee or contractor who will be employed as a country director or regional director by requesting that CCC approve that employee or contractor as a supergrade.

(2) To request approval of a supergrade, the participant shall provide CCC with a detailed description of both the duties and responsibilities of the position and the qualifications and background of the employee or contractor concerned. The participant shall also justify why the comparable FSN salary level is insufficient.

(3) Where a non-U.S. citizen employee or contractor will be employed as a country director, the MAP participant may request approval for a "Supergrade I" salary level, equivalent to a grade increase over the existing top grade of the FSN salary plan. The supergrade and its step increases are calculated as the percentage difference between the second highest and the highest grade in the FSN salary plan, with that percentage applied to each of the steps

in the top grade. Where the non-U.S. citizen employee or contractor will be employed as a regional director, with responsibility for activities and/or offices in more than one country, the MAP participant may request approval for a "Supergrade II" salary level, which is calculated relative to a "Supergrade I" in the same way the latter is calculated relative to the highest grade in the FSN salary plan.

(4) A U.S. citizen with dual citizenship with another foreign country or countries shall not be considered a non-U.S. citizen.

(g) CCC may determine, at CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

(h) For a brand promotion activity, CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity.

(i) CCC will reimburse for expenditures made after the conclusion of participant's program year provided:

(1) The activity was approved by CCC prior to the end of the program year;

(2) The activity was completed within 30 calendar days following the end of the program year; and

(3) All expenditures were made for the activity within 6 months following the end of the program year.

(j) A MAP participant shall not use MAP funds for any activity or any expenses incurred by the MAP participant prior to the date of the program agreement or after the date the program agreement is suspended or terminated, except as otherwise permitted by CCC.

(k) Except as otherwise provided in this subpart, travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). The MAP participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

§ 1485.18 Reimbursement procedures.

(a) Participants are required to use CCC's Internet-based system to request reimbursement for eligible MAP expenses. Claims for reimbursement shall contain the following information:

- (1) Activity type—brand or generic;
- (2) Activity number;
- (3) Commodity aggregate code;
- (4) Country code;
- (5) Cost category;
- (6) Amount to be reimbursed;

(7) If applicable, any reduction in the amount of reimbursement claimed to offset CCC demand for refund of amounts previously reimbursed and

reference to the relevant compliance report or written notice; and

(8) If applicable, any amount previously claimed that has not been reimbursed.

(b) All claims for reimbursement shall be submitted by the MAP participant's U.S. office to CCC.

(c) CCC will not reimburse a claim for less than \$10,000, except that CCC will reimburse a final claim for a MAP participant's program year for a lesser amount.

(d) CCC will not reimburse claims submitted later than 6 months after the end of a MAP participant's program year.

(e) If CCC overpays a reimbursement claim, the MAP participant shall repay CCC within 30 days of such overpayment either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(f) If a MAP participant receives a reimbursement or offsets an advanced payment which is later disallowed, the MAP participant shall repay CCC within 30 days of such disallowance the amount disallowed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(g) MAP funds may be expended by MAP participants only on legitimate, approved activities as set forth in the program agreement and approval letter. If a MAP participant discovers that MAP funds have not been properly spent, it shall notify CCC and shall within 30 days of its discovery repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(h) The MAP participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to CCC.

§ 1485.19 Advances.

(a) Policy. In general, CCC operates the MAP on a reimbursable basis. CCC will not advance funds to a MAP participant for brand promotion activities.

(b) Exception. A MAP participant for generic promotion activities may request an advance of MAP funds from CCC, provided the MAP participant meets the criteria for advance payments set forth in the applicable parts of this

title. If CCC approves the request, prior to making an advance, CCC may require the MAP participant to submit security in a form and amount acceptable to CCC to protect CCC's financial interests. CCC will not approve any request for an advance submitted later than 3 months after the end of a MAP participant's program year. At any given time, total payments advanced shall not exceed 40 percent of a MAP participant's approved generic activity budget for the program year.

(c) Interest. A MAP participant shall deposit and maintain in an insured bank account in the United States all funds advanced by CCC. The account shall be interest-bearing, unless the exceptions in the applicable part of this title apply. Interest earned by the MAP participant on funds advanced by CCC is not program income. The MAP participant shall remit any interest earned on the advanced funds to the appropriate entity as set forth in the applicable part of this title. The MAP participant shall, no later than 10 days after the end of each calendar quarter, submit a financial statement to CCC accounting for all funds advanced and all interest earned.

(d) Refunds due CCC. A MAP participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date of disbursement by CCC. By the end of the 90 calendar days, the MAP participant must submit reimbursement claims to offset the advance and submit a check made payable to CCC for any unexpended balance. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1485.20 Employment practices.

(a) A MAP participant shall enter into written contracts with all employees and shall ensure that all terms, conditions, and related formalities of such contracts conform to governing local law.

(b) A MAP participant shall in its overseas offices, conform its office hours, work week, and holidays to local law and to the custom generally observed by U.S. commercial entities in the local business community.

(c) A MAP participant may pay salaries or fees in any currency (U.S. or foreign). Participants should consult local laws regarding currency restrictions.

§ 1485.21 Financial management.

(a) A MAP participant shall implement and maintain a financial management system that conforms to

generally accepted accounting principles. A MAP participant's financial management system shall comply with the standards set forth in the applicable parts of this title.

(b) A MAP participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with these regulations.

(c) A MAP participant shall retain records and permit access to records in accordance with the requirements of the applicable parts of this title. These records shall include all documents related to employment such as employment applications, contracts, position descriptions, leave records, salary changes, and all records pertaining to contractors.

(d) A MAP participant shall maintain its records of expenditures and contributions in a manner that allows it to provide information by activity plan, country, activity number, and cost category. Such records shall include:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Original receipts for any other program-related expenditure in excess of \$75.00. CCC may, from time to time, determine a different minimum level and announce that minimum level in writing to all MAP participants and on the FAS Web site;

(3) The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to each of the participant's CCC resources accounts;

(6) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7) Documentation supporting contributions. These must include the dates, purpose and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and, the method of computing the claimed contributions. MAP participants must retain and make available for audit documentation related to claimed contributions.

(e) Upon request, a MAP participant shall provide to CCC originals of documents supporting reimbursement claims.

§ 1485.22 Reports.

(a) End-of-Year Contribution Report. Not later than 6 months after the end of its program year, a MAP participant shall submit two copies of a report that identifies, by activity and cost category and in U.S. dollar equivalent, contributions made by the participant, the U.S. industry, and the States during that program year. A suggested format of a contribution report is available from FAS. Foreign third-party contributions are not included in the end-of-year contribution report.

(b) Trip reports. Not later than 45 days after completion of travel (other than local travel), a MAP participant shall electronically submit a trip report. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(c) Research reports. Not later than 6 months after the end of its program year, a MAP participant shall submit a report on any research conducted pursuant to the approved MAP program.

(d) Evaluation reports. Not later than 6 months after the end of its program year, a MAP participant shall submit a report on any evaluations conducted in accordance with the approved MAP program.

(e) A MAP participant shall submit to CCC an annual audit in accordance with the applicable parts of this title. If CCC requires an additional audit with respect to a particular agreement, the MAP participant shall arrange for such audit and shall submit to CCC, in the manner to be specified by CCC, such audit of the agreement.

(f) CCC may require the submission of additional reports.

(g) A MAP participant's program agreement and/or approval letter shall specify to whom the participant shall submit the reports required in this section.

§ 1485.23 Evaluation.

(a) Policy. (1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the MAP. Evaluation of the MAP's effectiveness will depend on a clear statement by participants of goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the MAP and of individual participants' programming is to achieve or maintain sales that would

not have occurred in the absence of MAP funding. A MAP participant that can demonstrate such sales, taking into account extenuating factors beyond the participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development and scope of a MAP participant's program, contributing to program accountability, and providing evidence of program effectiveness.

(b) All MAP participants must report annual results against their target market and/or regional constraint/opportunity performance measures. These are outcome results usually based on multiple activities and should demonstrate progress made in the market. This report shall be completed and submitted to CCC no later than 6 months following the end of the participant's program year.

(c) MAP participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities' export sales to determine whether the activity achieved the goals specified in the approved MAP program. This evaluation shall be completed and submitted to CCC no later than 6 months following the end of the participant's program year.

(d) When appropriate or required by CCC, a MAP participant shall complete a program evaluation. A program evaluation is a review of the MAP participant's entire program, or an appropriate portion of the program as agreed to by the MAP participant and CCC, to determine the effectiveness of the MAP participant's strategy in meeting specified goals. Actual scope and timing of the program evaluation shall be determined by the MAP participant and CCC and specified in the approval letter. A MAP participant shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations and proposed changes in program strategy or design as a result of the evaluation. In addition to the requirements set forth in the applicable parts of this title, a program evaluation shall contain:

(1) The name of the party conducting the evaluation;

(2) The scope of the evaluation;

(3) A concise statement of the market constraint(s)/opportunity(ies) and the goals specified in the approved strategic plan;

(4) A description of the evaluation methodology;

(5) A description of export sales achieved;

(6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(e) On an annual basis, or more often when appropriate or required by CCC, a MAP participant shall complete and submit program success stories. From time to time, CCC will announce to all MAP participants in writing and on the FAS Web site the detailed requirements for completing and submitting program success stories.

§ 1485.24 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of MAP participants' activities under the MAP program. MAP participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews.

(b) Upon conclusion of the compliance review, USDA staff will provide either a written compliance report or a letter to the MAP participant. USDA staff will issue a compliance report if it appears that CCC may be entitled to recover funds from that participant and/or it appears that the participant is not complying with any of the terms or conditions of the program agreement, approval letter, or the applicable laws and regulations. The compliance report will explain the basis for any recovery of funds from the participant. Within 30 days of the date of the compliance report, the MAP participant shall repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. In the absence of any finding of funds due to CCC or other non-compliance, CCC will issue a letter to the MAP participant. If, as a result of a compliance review, CCC determines that further review is needed in order to ensure compliance with the requirements of MAP, CCC may require the participant to contract for an independent audit.

(c) In addition, CCC may notify a MAP participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the participant. CCC will explain the basis for any recovery of funds from the participant in the written notice. The

MAP participant shall within 30 days of the date of the notice repay CCC the amount owed either by submitting a check payable to CCC or by offsetting its next reimbursement claim. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

(d) The fact that a compliance review has been conducted by USDA staff does not signify that a MAP participant is in compliance with its program agreement, approval letter and/or applicable laws and regulations.

(e) Appeals.

(1) A MAP participant may, within 30 days of the date of the compliance report or written notice from CCC, submit a response to CCC. CCC, at its discretion, may extend the period for response.

(2) After review of the participant's response, CCC shall determine whether the participant owes any funds to CCC and will inform the participant in writing of the basis for the determination. CCC will initiate action to collect such amount by providing the participant a notice of delinquency and a demand for payment of the debt pursuant to Debt Settlement Policies and Procedures, 7 CFR part 1403.

(3) Within 30 days of the date of the determination, the participant may request in writing that CCC reconsider the determination and shall submit in writing the basis for such reconsideration. The participant may also request a hearing.

(4) If the participant requests a hearing, CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the participant bears the cost of a transcript; however, CCC may in its discretion have a transcript prepared at CCC's expense.

(5) CCC will base its final determination upon information contained in the administrative record. The participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by CCC.

§ 1485.25 Failure to make required contribution.

A MAP participant's required contribution will be specified in the approval letter. If the MAP participant's required contribution is specified as a dollar amount and the MAP participant does not make the required contribution, the MAP participant shall pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the MAP participant's required contribution is

specified as a percentage of the total amount reimbursed by CCC, the MAP participant may either return to CCC the amount of funds reimbursed by CCC to increase its actual contribution percentage to the required level or pay to CCC in dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A MAP participant shall remit such payment within 90 days after the end of its program year. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC.

§ 1485.26 Submissions.

For all permissible methods of delivery, submissions required by this subpart shall be deemed submitted as of the date received by CCC.

§ 1485.27 Disclosure of program information.

(a) Documents submitted to CCC by participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, 7 CFR part 1, subpart A—Official Records, and specifically 7 CFR 1.12, Handling Information from a Private Business.

(b) Any research conducted by a MAP participant pursuant to a MAP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in the applicable parts of this title.

§ 1485.28 Ethical conduct.

(a) A MAP participant shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out and in accordance with applicable U.S. Federal, state and local laws, and regulations. A MAP participant shall conduct its business in the United States in accordance with applicable Federal, state and local laws and regulations. All MAP participants must comply with the regulations in the applicable parts of this title.

(b) Except for a nonprofit U.S. agricultural cooperative or a U.S. for-profit entity, neither a MAP participant nor its affiliates shall make export sales of U.S. agricultural commodities and products covered under the terms of the agreement. Nor shall such entities charge a fee for facilitating an export sale. A MAP participant may, however, collect check-off funds and membership fees that are required for membership in the MAP participant. For the purposes of this paragraph, "affiliate" means any partnership, association, company, corporation, trust, or any other such

party in which the participant has an investment other than in a mutual fund.

(c) A MAP participant shall not limit participation in its MAP activities to members of its organization. Participants agree to ensure that its programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The MAP participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a copy of any document in its possession or control containing market information developed and produced under the terms of its MAP agreement. The participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials.

(d) A MAP participant shall select U.S. agricultural industry representatives to participate in activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by CCC, a MAP participant shall submit such selection criteria to CCC for approval.

(e) All MAP participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a participant's MAP agreement and the recovery of CCC funds related to such promotions from the participant.

(f) The MAP participant must report any actions or circumstances that may have a bearing on the propriety of the program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions in writing to CCC.

§ 1485.29 Contracting procedures.

(a) Neither CCC nor any other agency of the U.S. Government nor any official or employee of CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to MAP participant contracts with third parties.

(b) A MAP participant shall comply with the procurement standards set forth below and in the applicable parts of this title when procuring goods and services and when engaging in construction to implement program agreements. For purposes of this subpart, the "small purchase threshold" referenced in 7 CFR part 3019 is set at \$100,000.

(c) Each MAP participant shall establish contracting procedures that are open, fair, and competitive.

(d) Prior to entering into any contracts during a program year, a MAP participant must submit to CCC, for CCC approval, a written contracting plan. This contracting plan shall list each contract with an annual value of \$25,000 or more that the MAP participant expects to be party to during the program year, the method for evaluating proposals received for each contract competition, the method for monitoring and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The MAP participant may modify and resubmit this plan for re-approval at any time during the program year. In addition to the requirements set forth in the applicable parts of this title, this plan shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict-of-interest provision that states that no employee, officer, board member, or agent thereof of the MAP participant will participate in the review, selection, award or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee's, officer's, board member's, agent's family, partners, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for various situations, including, but not limited to: Solicitations for highly technical services; solicitations for services that are not common in a specific market; solicitations that yield

receipt of three or more bids; solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that exceeds \$25,000 or more;

(5) Requirements to conduct an appropriate form of competition every 3 years on all multi-year contracts with an annual value of \$25,000 or more. CCC may, from time to time, determine a different minimum value and announce that minimum value in writing to all MAP participants and on the FAS Web site. However, contracts for in-country representation are not required to be re-competed after the initial award. Instead, the performance of in-country representation must be evaluated and documented by the MAP participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds provided to them by the MAP participant.

(e) A MAP participant may undertake MAP promotional activities directly or through a domestic or foreign third-party. However, the MAP participant shall remain responsible and accountable to CCC for all MAP promotional activities and related expenditures undertaken by such third party and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to CCC in relation to such third-party's promotional activities and expenditures.

§ 1485.30 Property standards.

The MAP participant shall insure all real property and equipment acquired in furtherance of program activities and safeguard such against theft, damage and unauthorized use. The participant shall promptly report any loss, theft, or

damage of property to the insurance company.

§ 1485.31 Anti-fraud requirements.

(a) All MAP participants.

(1) All MAP participants annually shall submit to CCC for approval a detailed fraud prevention program. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The MAP participant shall not conduct or permit any MAP promotion activities to occur unless and until CCC has communicated in writing approval of the MAP participant's fraud prevention program.

(2) The MAP participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the participant's MAP program agreement and/or approval letter. The MAP participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by CCC or USDA to the MAP participant for the prompt investigation of such allegation or occurrence.

(b) MAP participants with brand programs.

(1) The MAP participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The MAP participant shall repay to CCC funds paid to a brand participant through the MAP participant on claims that the MAP participant or CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 days of the MAP participant's determination or CCC's disallowance. The MAP participant shall repay CCC by submitting a check to CCC or by offsetting the participant's next reimbursement claim. The MAP participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. A MAP participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for MAP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees or agents, unless CCC

determines that the MAP participant was grossly negligent in the operation of the brand program regarding such claims. CCC shall communicate any such determination to the MAP participant in writing.

§ 1485.32 Program income.

Any revenue or refunds generated from an activity, e.g., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed with MAP funds, shall be used by the MAP participant in furtherance of its approved MAP activities in the program year in which the program income was received. Interest earned on funds advanced by CCC is not program income.

§ 1485.33 Amendment.

A program agreement may be amended only in writing with the consent of CCC and the MAP participant.

§ 1485.34 Noncompliance with an agreement.

If a MAP participant fails to comply with any term in its program agreement or approval letter, CCC may take one or more of the enforcement actions set forth in the applicable parts of this title and, if, appropriate, initiate a claim against the MAP participant, following the procedures set forth in this subpart. CCC may also initiate a claim against a MAP participant if program income or CCC-provided funds are lost due to an action or omission of the MAP participant.

§ 1485.35 Suspension, termination, and closeout of agreements.

A program agreement may be suspended or terminated in accordance with the applicable parts of this title. If an agreement is terminated, the applicable parts of this title will apply to the closeout of the agreement.

§ 1485.36 Paperwork reduction requirements.

The paperwork and recordkeeping requirements imposed by this subpart have been approved by OMB under the Paperwork Reduction Act of 1980. OMB has assigned control number 0551-0026 for this information collection.

Dated: August 19, 2009.

Michael V. Michener,

Administrator, Foreign Agricultural Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9-21552 Filed 9-4-09; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0317]

RIN 1625-AA87

Security Zone; Calcasieu River and Ship Channel, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to disestablish the permanent safety zone at Trunkline LNG in Lake Charles, LA and to replace it with a security zone with new boundaries. The Coast Guard also proposes to establish two additional permanent security zones on the waters of the Calcasieu River for the mooring basins at Cameron LNG in Hackberry, LA and PPG Industries in Lake Charles, LA. The Coast Guard also proposes to disestablish the moving safety zone for Liquefied Natural Gas ("LNG") vessels in the Calcasieu ship channel and replace it with a moving security zone of the same dimensions. These security zones are needed to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. Unless exempted under this rule, entry into or movement within these security zones would be prohibited without permission from the Captain of the Port or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before October 8, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2009-0317 using any one of the following methods:

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

(2) *Fax:* 202-493-2251.

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

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

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Lieutenant Clint Smith, Marine Safety Unit Lake Charles, LA, telephone (337) 491-7800, or e-mail

clinton.p.smith@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0317), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2009-0317" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility,

please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-317 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

Public Meeting

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

Background and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels. To enhance security, the Captain of the Port, Port Arthur proposes to establish permanent security zones on the waters of the Calcasieu River in Lake Charles, LA; Hackberry, LA, and moving security zones around certain vessels.

This proposed rule would establish new, distinct security zones on the waters of the Calcasieu River. These zones would protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Vessels

operating within the Captain of the Port Zone are potential targets of terrorist attacks, or platforms from which terrorist attacks may be launched upon from other vessels, waterfront facilities, and adjacent population centers.

This proposed rule would also delete the moving safety zone for non-gas free Liquefied Natural Gas ("LNG") vessels transiting the Calcasieu Channel and Calcasieu River and add a moving security zone that may commence at any point while certain vessels are transiting the Calcasieu Channel or Calcasieu River on U.S. territorial waters in the Captain of the Port, Port Arthur zone. These security zones would be established to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Vessels operating within the Captain of the Port zone are potential targets of terrorist attacks, or potential launch platforms for terrorist attacks on other vessels, waterfront facilities, and adjacent population centers.

Due to the potential for terrorist attacks, this proposed rule would allow the Captain of the Port to create moving security zones around certain vessels as deemed necessary, on a case-by-case basis. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on these vessels, and potential use of the vessels to launch attacks on waterfront facilities and adjacent population centers located within the Captain of the Port zone. Vessels having a need to enter these security zones must obtain express permission from the Captain of the Port, Port Arthur or a designated representative prior to entry.

These zones are being proposed for an area concentrated with commercial facilities considered critical to national security. This proposed rule is not designed to restrict access to vessels engaged, or assisting in commerce with waterfront facilities within fixed security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the fixed security zones, and vessels operated by federal, state, county or municipal agencies. By limiting access to these areas the Coast Guard would reduce potential methods of attack on vessels, waterfront facilities, and adjacent population centers located within the zones. All vessels not exempted under the provisions of this proposed regulation desiring to enter these zones would be required to obtain express permission from the Captain of the Port, Port Arthur or a designated representative prior to entry.

Discussion of Proposed Rule

The Captain of the Port proposes to revise 33 CFR 165.805 to establish permanent fixed security zones on the waters of the Calcasieu River for the mooring basins at Trunkline LNG in Lake Charles, LA; Cameron LNG in Hackberry, LA; and PPG Industries in Lake Charles, LA. The coordinates and locations of the fixed security zones use the North American Datum of 1983 (NAD 1983) and are as follows: (1) Trunkline LNG basin, all waters encompassed by a line connecting the following points, beginning at 30°06'36" N, 93°17'36" W, south to a point 30°06'33" N, 93°17'36" W, east to a point 30°06'30" N, 93°17'02" W, north to a point 30°06'33" N, 93°17'01" W, then following the shoreline to the beginning point. (2) Cameron LNG basin, all waters encompassed by a line connecting the following points, beginning at 30°02'33" N, 93°19'53" W, east to a point at 30°02'34" N, 93°19'50" W, south to a point at 30°02'10" N, 93°19'52" W and west to a point at 30°02'10" N, 93°19'59" W, then following the shoreline to the beginning point. (3) PPG industries basin, all waters encompassed by a line connecting the following points, beginning at 30°13'11" N, 93°16'52" W, east to a point at 30°13'11" N, 93°16'51" W, northeast to a point at 30°13'29" N, 93°16'34" W, then following the shoreline to the beginning point.

In addition, the Captain of the Port proposes to establish moving security zones for certain vessels, for which the Captain of the Port deems enhanced security measures are necessary, on a case-by-case basis. These moving security zones would be activated for certain vessels within the Captain of the Port, Port Arthur zone transiting U.S. territorial waters and extend channel edge to channel edge on the Calcasieu Channel and shoreline to shoreline on the Calcasieu River, 2 miles ahead and 1 mile astern of certain designated vessels while in transit. Meeting, crossing or overtaking situations are not permitted within the security zone unless specifically authorized by the Captain of the Port. These proposed security zones would be part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

All vessels not exempted under paragraph (b) of the proposed section 165.805 would be prohibited from entering the proposed security zones unless authorized by the Captain of the Port, Port Arthur or a designated representative. For authorization to

enter the proposed security zones vessels contact Marine Safety Unit Lake Charles at (337) 491-7800 or the on-scene patrol vessel on VHF-FM channel 13.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the fixed security zones are not part of the navigable waterway or a commercial fishing ground and do not impede commercial traffic on the Calcasieu Waterway. The proposed moving security zone is limited in nature and would not create undue delay to vessel traffic in or around the Calcasieu River and Ship Channel.

Small Entities

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

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

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The proposed rules for fixed security zones would not interfere with regular vessel traffic within the Calcasieu Ship Channel, Calcasieu River or the Intracoastal Waterway; and (2) the proposed rule for moving security zones are of limited duration and vessels may request permission to enter the security zone from the Captain of the Port or his representative.

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

qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Clint Smith at (337) 491-7800. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.805 to read as follows:

§ 165.805 Security Zones; Calcasieu River and Ship Channel, Louisiana.

(a) *Location.*

(1) The following areas are designated as fixed security zones, (all coordinates are based upon North American Datum of 1983 [NAD 83]):

(i) Trunkline LNG basin, all waters encompassed by a line connecting the following points, beginning at 30°06'36" N, 93°17'36" W, south to a point 30°06'33" N, 93°17'36" W, east to a point 30°06'30" N, 93°17'02" W, north to a point 30°06'33" N, 93°17'01" W, then following the shoreline to the beginning point.

(ii) Cameron LNG basin, all waters encompassed by a line connecting the following points, beginning at 30°02'33" N, 093°19'53" W, east to a point at 30°02'34" N, 093°19'50" W, south to a point at 30°02'10" N, 093°19'52" W and west to a point at 30°02'10" N, 93°19'59" W, then following the shoreline to the beginning point.

(iii) PPG industries basin, all waters encompassed by a line connecting the following points, beginning at 30°13'11" N, 93°16'52" W, east to a point at 30°13'11" N, 93°16'51" W, northeast to a point at 30°13'29" N, 93°16'34" W, then following the shoreline to the beginning point.

(2) The following areas are moving security zones: All waters within the Captain of the Port, Port Arthur zone commencing at U.S. territorial waters and extending channel edge to channel edge on the Calcasieu Channel and shoreline to shoreline on the Calcasieu River, 2 miles ahead and 1 mile astern of certain designated vessels while in transit. Meeting, crossing or overtaking situations are not permitted within the security zone unless specifically authorized by the Captain of the Port.

(b) *Regulations:*

(1) Entry into or remaining in a fixed zone described in paragraph (a)(1) of this section is prohibited for all vessels except:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational or logistical support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by federal, state, county, or municipal agencies.

(2) Entry into or remaining in moving zones described in paragraph (a)(2) of this section is prohibited for all vessels except:

(i) Moored vessels or vessels anchored in a designated anchorage area. A moored or an anchored vessel in a security zone described in paragraph (a)(2) of this section must remain moored or anchored unless it obtains permission from the Captain of the Port to do otherwise;

(ii) Commercial vessels operating at waterfront facilities located within the zone;

(iii) Vessels providing direct operational support to commercial vessels within a moving security zone;

(iv) Vessels operated by federal, state, county, or municipal agencies.

(3) Other persons or vessels requiring entry into security zones described in this section must request permission from the Captain of the Port, Port Arthur or designated representatives.

(4) To request permission as required by these regulations, contact Marine Safety Unit Lake Charles at (337) 491–7800 or the on-scene patrol vessel.

(5) All persons and vessels within a security zone described in this section must comply with the instructions of the Captain of the Port, Port Arthur, designated on-scene U.S. Coast Guard patrol personnel or other designated representatives. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Designated representatives include federal, state, local and municipal law enforcement agencies.

(c) *Informational broadcasts.* The Captain of the Port, Port Arthur will inform the public when moving security zones have been established around vessels via Broadcast Notice to Mariners.

Dated: June 15, 2009.

J.J. Plunkett,

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

[FR Doc. E9-21580 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3060

[Docket No. RM2009-9; Order No. 287]

Competitive Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Proposed rule.

SUMMARY: This document announces a proposed rulemaking in response to a recent Postal Service filing of a proposed methodology for the allocation of assets and liabilities in theoretical competitive enterprise.

DATES: Submit comments on or before October 23, 2009. Submit reply comments on or before November 23, 2009.

ADDRESSES: Submit comments electronically via the Commission's electronic Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 79256 (December 24, 2008).

In PRC Order No. 151, which established financial accounting practices and tax rules for competitive products, the Commission directed the Postal Service to develop the assets and liabilities of the theoretical competitive products enterprise by identifying all asset and liability accounts within its Chart of Accounts used solely for the

provision of (a) competitive products or (b) market dominant products, and for those not identified with either, to submit for Commission approval a proposed methodology detailing how each asset and liability account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise.¹ See 39 CFR 3060.12 and 3060.13; see also Order No. 151 at 17-18.

In satisfaction of that requirement, on July 23, 2009, the Postal Service filed a proposed methodology for the allocation of assets and liabilities to the theoretical competitive enterprise.² The Postal Service avers that, with "few exceptions," the proposed methodology tracks that used by the Commission in PRC-LR-1 in Docket No. RM2008-5. *Id.* at 1-2. The differences concern the following entries:

1. *Asset:* Supplies, Advances, and Prepayments—the Postal Service allocation is based on total revenues; the Commission did not propose an allocation;

2. *Liability:* Payables and Accrued Expenses—the Postal Service allocation is based on total revenues; the Commission did not propose an allocation;

3. *Liability:* Customer Deposit Accounts—the Postal Service allocation is based on total revenues; the Commission allocation is limited to a specific account, Expedited Mail Advance Deposit;

4. *Liability:* Outstanding Postal Money Orders—the Postal Service allocation is based on actual Outstanding International Money Orders; the Commission did not propose an allocation; and

5. *Liability:* Deferred Gains on Sales of Property—the Postal Service did not propose an allocation; the Commission allocation is based on Building Depreciation Expenses.

The Notice, which is available on the Commission's Web site, <http://www.prc.gov>, includes a spreadsheet showing the Commission's and the Postal Service's proposed allocation procedures. The Notice also provides rationales for the Postal Service's proposals.

Interested persons are invited to comment on the Postal Service's proposed methodology and may propose alternative methodologies.

¹ See Docket No. RM2008-5, PRC Order No. 151, Order Establishing Tax Rules and Accounting Practices for Competitive Products, December 18, 2009 (Order No. 151).

² Notice of United States Postal Service Regarding Proposed Methodology for the Allocation of Assets and Liabilities to Competitive Products, July 23, 2009 (Notice).

Comments are due no later than 45 days after publication of this order in the **Federal Register**. Reply comments are due no later than 75 days after publication of this order in the **Federal Register**.

The Commission designates Patricia A. Gallagher to represent the interests of the general public in this proceeding.

It is ordered:

1. The Commission establishes Docket No. RM2009-9 to consider the matters related to the allocation of assets and liabilities to the theoretical competitive products enterprise.

2. Interested persons may submit initial comments within 45 days of publication of this order in the **Federal Register**.

3. Interested persons may submit reply comments within 75 days of publication of this Order in the **Federal Register**.

4. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated to serve as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

Authority: 39 U.S.C. 503, 2011, 3633, 3634.

Issued: August 24, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9-21476 Filed 9-4-09; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0573; FRL-8953-6]

Disapproval of State Implementation Plan Revisions, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP) concerning volatile organic compound (VOC) emissions from polymeric foam manufacturing operations. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking

comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 8, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0573, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail.

<http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947-4115, steckel.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to EPA.

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule proposed for disapproval with the date that it was adopted and submitted.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1175	Control of Emissions from the Manufacturing of Polymeric Cellular (Foam) Products.	09/07/07	03/07/08

On April 17, 2008, we determined that the rule submittal in Table 1 met the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved a previous version of Rule 1175 into the SIP on August 25, 1994. *Please see* 57 FR 43751. There have been no subsequent and intervening submittals of Rule 1175.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 1175 was designed to reduce VOCs, Chlorofluorocarbon (CFC), and methylene chloride emissions from expanded polystyrene (EPS) foam molders, direct injection polystyrene foam extrusion, polyurethane, isocyanurate and phenolic foam manufacturing operations. The District amended the Rule in order to provide expandable polystyrene molding

operations with an additional compliance option.

EPA’s technical support document (TSD) has more information about this rule.

II. EPA’s Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an area classified as severe nonattainment for ozone (see 40 CFR part 81), so Rule 1175 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements include the following:

- 1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

- 2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook).

- 3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).

- 4. “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

B. Does the rule meet the evaluation criteria?

Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

These provisions do not satisfy the requirements of section 110 and part D of the Act and prevent full approval of the SIP revision. We propose to disapprove the SIP revision based on the following deficiencies:

- 1. The rule must require demonstration, through source testing approved in writing by the Executive

Officer, that the systems and techniques in place at a facility achieve 93% collection and reduction of emissions for sources complying with paragraph (c)(4)(B)(iii).

2. The rule must clarify that all operational techniques and parameters needed to achieve 93% control to comply with paragraph (c)(4)(B)(iii) must be clearly defined and enforceable through a federally enforceable permit such as a Title V operating permit. Rule 1175 should also be revised where possible to identify these parameters.

3. The rule must clarify that all operational techniques and parameters needed to achieve 90% collection and 95% destruction to comply with paragraphs (c)(4)(B)(i) and (ii) must be clearly defined and enforceable through a federally enforceable permit such as a Title V operating permit. Rule 1175 should also be revised where possible to identify these parameters.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) of the Act, we are proposing a disapproval of the submitted SCAQMD Rule 1175. If finalized, this action would retain the existing SIP rule in the SIP. There are no sanction or FIP implications with this action pursuant to Clean Air Act Section 179, as this is not a required Clean Air Act submittal.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply disapprove requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a) (2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not

have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it disapproves a state rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 21, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9-21550 Filed 9-4-09; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1066]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 7, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1066, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) Kevin.Long@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal

Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) Kevin.Long@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)	
				Existing	Modified
City of Baltimore, Maryland					
Maryland	City of Baltimore	Gwynn Falls	Approximately 30 feet downstream of Old Annapolis Road. Approximately 2,450 feet upstream of Forest Park Avenue.	+7 +284	+9 +275
Maryland	City of Baltimore	Herring Run	Just downstream of the I-95 bridge Approximately 1,300 feet upstream of the I-895 bridge.	None None	+14 +31
Maryland	City of Baltimore	Jones Falls	Approximately 50 feet downstream of East Pratt Street. Approximately 200 feet west of the intersection of Falls Road and Maryland Avenue.	None None	+9 +67
Maryland	City of Baltimore	Maidens Choice Run	Approximately 250 feet downstream of Colleen Road northeast of the intersection of South Beechfield Avenue. Approximately 270 feet southeast of the intersection of Mallow Hill Road and Mardrew Road.	None None	+173 +333
Maryland	City of Baltimore	Unnamed Tributary to Herring Run.	Approximately 1,420 feet upstream of North Bend Road. Approximately 2,000 feet upstream of North Point Road.	None None	+16 +36

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (*see below*) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Baltimore

Maps are available for inspection at the Department of Planning, 401 East Fayette Street, 8th Floor, Baltimore, MD 21202.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Carroll County, Arkansas, and Incorporated Areas				
Leatherwood Creek	Approximately 0.61 miles upstream of Magnetic Road	None	+1109	Unincorporated Areas of Carroll County.
	Approximately 1,250 feet upstream of Magnetic Road	None	+1131	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

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Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^Elevation in meters (MSL)		Communities affected
		Effective	Modified	

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ADDRESSES

Unincorporated Areas of Carroll County

Maps are available for inspection at the County Courthouse, 210 West Church Street, Berryville, AR 72616.

Jefferson County, Illinois, and Incorporated Areas

Bell Street Ditch	The confluence with Casey Fork (approximately 2,438 feet downstream from State Highway 142).	None	+436	Unincorporated Areas of Jefferson County.
	The railroad (approximately 450 feet downstream of State Highway 142).	None	+444	
Botches Ditch	Just upstream of State Highway 37	None	+435	Unincorporated Areas of Jefferson County.
Brickyard Creek	Approximately 200 feet downstream of 30th Street	None	+479	Unincorporated Areas of Jefferson County.
	Approximately 290 feet downstream of 10th Street	None	+465	
Casey Fork	Just downstream of 11th Street	None	+469	Unincorporated Areas of Jefferson County.
	Approximately 1,670 feet downstream of State Highway 142.	None	+434	
Church Tributary	Approximately 2,735 feet upstream of Tolle Road	None	+455	Unincorporated Areas of Jefferson County.
	Approximately 165 feet downstream of State Highway 37.	None	+466	
East Fork Botches Ditch	Approximately 200 feet upstream of State Highway 37	None	+469	Unincorporated Areas of Jefferson County.
	Approximately 350 feet downstream of South Fishers Lane.	None	+475	
Rend Lake	Just downstream of South Fishers Lane	None	+475	Unincorporated Areas of Jefferson County, City of Nason, Village of Bonnie, Village of Ina.
	Approximately 12,500 feet west of the intersection of County Highway 43 and East Franklin Road.	None	+415	
West Tributary	Approximately 2,400 feet west of the intersection of Bonnie Road and Cooley Lane.	None	+415	Unincorporated Areas of Jefferson County.
	Approximately 195 feet upstream of Interstate 57/64 ..	None	+458	
	Just downstream of 42nd Street	None	+477	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

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ADDRESSES

City of Nason

Maps are available for inspection at City Hall, 121 North 9th Street, Nason, IL 62866.

Unincorporated Areas of Jefferson County

Maps are available for inspection at the Jefferson County Courthouse, 100 South 10th Street, Mount Vernon, IL 62864.

Village of Bonnie

Maps are available for inspection at the Village Hall, 270 South Railroad Avenue, Bonnie, IL 62816.

Village of Ina

Maps are available for inspection at the Village Hall, 306 South Elm Street, Ina, IL 62846.

Simpson County, Kentucky, and Incorporated Areas

Webb Branch	Just downstream KY-1008 (Industrial Bypass)	None	+660	City of Franklin, Unincorporated Areas of Simpson County.
	Approximately 0.4 miles upstream of Witt Road	None	+736	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

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ADDRESSES

City of Franklin

Maps are available for inspection at 117 West Cedar Street, Franklin, KY 42135.

Unincorporated Areas of Simpson County

Maps are available for inspection at 100 Main Street, Franklin, KY 42135.

York County, Maine (All Jurisdictions)

Atlantic Ocean	Along the shoreline, at the intersection of Great Hill Road and Sand Dollar Lane.	+11	+12	Town of Kennebunkport, City of Biddeford, Town of Kennebunk, Town of Kittery, Town of Ogunquit, Town of Old Orchard Beach, Town of Wells, Town of York.
	Along the shoreline, approximately 230 feet east of the intersection of Ocean View Lane and Ontio Way.	+14	+33	
Cape Porpoise Harbor	Along the shoreline, at the intersection of Paddy Creek Road and Paddy Creek Hill Road.	+8	+9	Town of Kennebunkport.
	Along the shoreline, approximately 330 feet east of the terminus of Harbor Drive.	+13	+17	
Cleaves Cove	Along the shoreline, approximately 400 feet from the intersection of Turbats Creek Road and Field Point Road.	None	+13	Town of Kennebunkport.
Coffin Brook	Along the shoreline, at the terminus of Halcyon Drive	+13	+22	
	Just upstream of the confluence of Worster Brook	None	+133	Town of Berwick.
	Approximately 1.63 miles upstream of the confluence with Worster Brook.	None	+254	
Coffin Brook Tributary 1	Just upstream of the confluence of Coffin Brook	None	+141	Town of Berwick.
	Just downstream of Cemetery Road	None	+320	
Driscoll Brook	Approximately 465 feet east of the intersection of State Highway 236 and the railroad.	None	+85	Town of Berwick, Town of South Berwick.
	Just downstream of Blackberry Hill Road	None	+159	
Ferguson Brook	Just upstream of the confluence of Worster Brook	None	+117	Town of Berwick.
	Just downstream of Cemetery Road	None	+326	
Goosefare Brook	Along the shoreline, at the intersection of Royal Street and Massachusetts Avenue.	+8	+9	Town of Old Orchard Beach.
	Along the shoreline, at the intersection of New Salt Road and Grand Avenue.	None	+15	
Keay Brook	Just upstream of the confluence of Salmon Falls River.	None	+186	Town of Berwick.
	Approximately 890 feet south of the terminus of Richardson Drive.	None	+250	
Kennebunk River	Approximately 340 feet south of the terminus of Old Boston Road.	None	+9	Town of Arundel.
Little River	Just upstream of the confluence of Salmon Falls River.	None	+183	Town of Berwick.
	Just upstream of the intersection of Little River Road and Dark Hollow Lane.	None	+249	
Mulloy Brook	Just upstream of the confluence of Worster Brook	None	+142	Town of Berwick.
	Approximately 1.1 mile upstream of the confluence of Worster Brook.	None	+304	
Piscataqua River	Along the shoreline, approximately 270 feet south of the intersection of Langston Point and Prince Avenue.	+8	+9	Town of Kittery.
	Along the shoreline, approximately 560 feet west of the intersection of Langston Point and Prince Avenue.	+8	+14	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Portsmouth Harbor	Along the shoreline, approximately 165 feet east of the intersection of Haley Road and Pepperrell Road.	+8	+9	Town of Kittery.
	Along the shoreline, approximately 390 feet east of the intersection of Bellamy Lane and Pepperrell Road.	+14	+22	
Saco River	Along the shoreline, at the terminus of Crestwood Drive.	+8	+9	City of Biddeford.
	Along the shoreline, at the terminus of Reserved Lane.	+13	+16	
Sampson Cove	Along the shoreline, approximately 1,200 feet east of the intersection of Marshall Point Road and Mills Road.	+8	+14	Town of Kennebunkport.
	Along the shoreline, approximately 720 feet east of the intersection of Fishers Lane and Agamenticus Avenue.	+15	+17	
Spruce Creek	Along the shoreline, approximately 920 feet north of the intersection of Whipple Road and Newson Avenue.	+8	+9	Town of Kittery.
	Along the shoreline, approximately 920 feet north of the intersection of Whipple Road and Newson Avenue.	+8	+13	
The Pool	Along the shoreline, approximately 560 feet from the intersection of Days Landing and Dory Lane.	None	+9	City of Biddeford.
	Along the shoreline, approximately 490 feet from the intersection of Winter Harbor Lane and Bridge Road.	+8	+11	
Worster Brook	Just upstream of the confluence of Salmon Falls River.	None	+76	Town of Berwick.
	Approximately 5.8 miles upstream of the confluence with Salmon Falls River.	None	+228	
Worster Brook Tributary 3	Just upstream of the confluence of Worster Brook	None	+194	Town of Berwick.
	Just downstream of Thompson Hill Road	None	+310	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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ADDRESSES

City of Biddeford

Maps are available for inspection at City Hall, 205 Main Street, Biddeford, ME 04005.

Town of Arundel

Maps are available for inspection at the Town Hall, 468 Limerick Road, Arundel, ME 04046.

Town of Berwick

Maps are available for inspection at the Town Hall, 11 Sullivan Square, Berwick, ME 03901.

Town of Kennebunk

Maps are available for inspection at the Town Hall, 1 Summer Street, Kennebunk, ME 04043.

Town of Kennebunkport

Maps are available for inspection at the Town Hall, 6 Elm Street, Kennebunkport, ME 04046.

Town of Kittery

Maps are available for inspection at the Town Hall, 200 Rogers Road, Kittery, ME 03904.

Town of Ogunquit

Maps are available for inspection at the Town Hall, 23 School Street, Ogunquit, ME 03907.

Town of Old Orchard Beach

Maps are available for inspection at the Town Hall, 1 Portland Avenue, Old Orchard Beach, ME 04064.

Town of South Berwick

Maps are available for inspection at the Town Hall, 180 Main Street, South Berwick, ME 03908.

Town of Wells

Maps are available for inspection at the Town Hall, 208 Sanford Road, Wells, ME 04090.

Town of York

Maps are available for inspection at the Town Hall, 186 York Street, York, ME 03909.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Hampden County, Massachusetts, and Incorporated Areas				
Connecticut River	Approximately 3,100 feet downstream of the confluence with Threemile Brook.	+56	+57	City of Chicopee, City of Holyoke, City of Springfield, Town of Agawam, Town of Longmeadow, Town of West Springfield.
	Just upstream of Interstate 90 (Massachusetts Turnpike).	+64	+66	
	Approximately 6 miles upstream of U.S. Route 202 ...	+121	+122	

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+ North American Vertical Datum.

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ADDRESSES

City of Chicopee

Maps are available for inspection at the City Hall Annex, 274 Front Street, Fourth Floor, Chicopee, MA 01013.

City of Holyoke

Maps are available for inspection at the City Hall Annex, 536 Dwight Street, Room 300, Holyoke, MA 01040.

City of Springfield

Maps are available for inspection at the Office of Emergency Preparedness, 1212 Carew Street, Springfield, MA 01104.

Town of Agawam

Maps are available for inspection at the Town Hall, 36 Main Street, Agawam, MA 01001.

Town of Longmeadow

Maps are available for inspection at the Town Hall, 20 Williams Street, Longmeadow, MA 01106.

Town of West Springfield

Maps are available for inspection at 26 Central Street, Suite 20, West Springfield, MA 01089.

Norfolk County, Massachusetts (All Jurisdictions)

Atlantic Ocean	Along the shoreline, approximately 100 feet south of the intersection of Stockbridge Street and Margin Street.	+11	+21	Town of Cohasset.
	Along the shoreline approximately 330 feet northeast from the end of Whitehead Road.	+25	+21	
Weymouth Fore River Bay ...	Along the shoreline, approximately 275 feet east of the intersection of Pleasant View Avenue and Venus Road.	+14	+12	Town of Braintree, Town of Weymouth.
	Along the shoreline, approximately 1,000 feet west of the intersection of Monatiquot Street and Bluff Road.	+11	+15	

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Depth in feet above ground.

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ADDRESSES

Town of Braintree

Maps are available for inspection at the Town Hall, 1 John F. Kennedy Memorial Drive, Braintree, MA 02184.

Town of Cohasset

Maps are available for inspection at the Town Hall, 41 Highland Avenue, Cohasset, MA 02025.

Town of Weymouth

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at the Town Hall, 75 Middle Street, Weymouth, MA 02189.

Houston County, Tennessee, and Incorporated Areas

Tennessee River	Houston County boundary approximately at rivermile 74.3.	None	+375	Unincorporated Areas of Houston County.
	Houston County boundary approximately at rivermile 82.5.	None	+375	

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ADDRESSES

Unincorporated Areas of Houston County

Maps are available for inspection at 31 East Main Street, 101 Courthouse, Erin, TN 37061.

Bandera County, Texas, and Incorporated Areas

Medina River	Flooding effects from the Bandera River just downstream of State Highway 16.	None	+215	Unincorporated Areas of Bandera County.
	Flooding effects from the Medina River just upstream of Harvey Ray Drive.	None	+1213	

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ADDRESSES

Unincorporated Areas of Bandera County

Maps are available for inspection at 502 11th Street, Bandera, TX 78003.

Bosque County, Texas, and Incorporated Areas

Tributary 1 to North Bosque River.	Approximately 1,000 feet downstream of confluence with Tributary to North Bosque River.	None	+560	Unincorporated Areas of Bosque County.
	Approximately 400 feet upstream of State Highway 6	None	+590	
Tributary to North Bosque River.	Approximately 1,000 feet downstream of confluence with Tributary 1 to North Bosque River.	None	+560	Unincorporated Areas of Bosque County.
	Approximately 900 feet upstream of State Highway 6	None	+572	

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ADDRESSES

Unincorporated Areas of Bosque County

Maps are available for inspection at the County Courthouse, 201 South Main, Meridian, TX 76665.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Brooks County, Texas, and Incorporated Areas				
Cibolo Creek	At the confluence with Palo Blanco Creek	None	+106	Unincorporated Areas of Brooks County.
	Just downstream of State Highway 325	None	+113	
Palo Blanco Creek	At the confluence with Cibolo Creek	None	+106	Unincorporated Areas of Brooks County.
	Just downstream of State Highway 325	None	+113	

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+ North American Vertical Datum.

Depth in feet above ground.

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ADDRESSES

Unincorporated Areas of Brooks County

Maps are available for inspection at 408 West Travis Street, Falfurrias, TX 78355.

Howard County, Texas, and Incorporated Areas				
Beals Creek	Just upstream from Midway Creek	None	+2375	City of Big Spring.
	At the confluence of One Mile Lake	+2413	+2414	
Big Spring Draw	At the confluence with Beals Creek	None	+2375	City of Big Spring, Unincorporated Areas of Howard County.
	Approximately 1,000 feet upstream of Country Club Road.	None	+2639	
Reals Draw	At the confluence with Beals Creek	+2407	+2408	City of Big Spring, Unincorporated Areas of Howard County.
	Just downstream from Hilltop Road	None	+2483	
Stream BSP1	At the confluence with Big Spring Draw	+2579	+2580	City of Big Spring.
	Just upstream from Parkway Road	+2602	+2603	
Stream BSP2	At the confluence of Big Spring Draw	+2630	+2632	City of Big Spring, Unincorporated Areas of Howard County.
	Approximately 885 feet upstream of Driver Road	+2643	+2645	
Stream BSP3	At the confluence with Beals Creek	+2409	+2410	City of Big Spring.
	Just upstream of Frontage Road	+2496	+2487	
Stream BSP4	At the confluence with Stream BSP3	+2447	+2448	City of Big Spring.
	Just upstream of Frontage Road	+2496	+2495	
Stream BSP5	At the confluence of Beals Creek and One Mile Lake	+2414	+2413	City of Big Spring.
	Just upstream of Frontage Road	+2468	+2469	

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+ North American Vertical Datum.

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ADDRESSES

City of Big Spring

Maps are available for inspection at 310 Nolan Street, Big Spring, TX 79720.

Unincorporated Areas of Howard County

Maps are available for inspection at 300 Main Street, Big Spring, TX 79720.

Upshur County, Texas, and Incorporated Areas				
Victory Branch	Approximately 680 feet downstream of Salt Water Road.	None	+315	Unincorporated Areas of Upshur County.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 650 feet downstream of Salt Water Road.	None	+315	

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+ North American Vertical Datum.

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ADDRESSES

Unincorporated Areas of Upshur County

Maps are available for inspection at the County Courthouse, 100 West Tyler Street, Gilmer, TX 75644.

Uvalde County, Texas, and Incorporated Areas

Cooks Slough	Flooding effects extending from Cooks Slough, just upstream of US Highway 83.	None	+893	Unincorporated Areas of Uvalde County.
	Flooding effects extending from Cooks Slough, 0.7 miles upstream of US Highway 83.	None	+895	

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ADDRESSES

Unincorporated Areas of Uvalde County

Maps are available for inspection at 100 North Getty Street, Uvalde, TX 78801.

Bedford County, Virginia, and Incorporated Areas

Lick Run	Approximately 5.2 miles above confluence with Big Otter River.	None	+727	Unincorporated Areas of Bedford County.
Tributary No. 11 To Ivy Creek.	Just downstream of Route 460	None	+756	Unincorporated Areas of Bedford County.
	Approximately 850 feet from confluence with Ivy Creek.	None	+696	
	Just downstream of Forest Road	None	+801	

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ADDRESSES

Unincorporated Areas of Bedford County

Maps are available for inspection at the Office of the County Administrator, 122 East Main Street, Suite 2002, Bedford, VA 24523.

Fairfax County, Virginia, and Incorporated Areas

Cameron Run	Approximately 1,975 feet upstream of the confluence with Potomac River.	None	*11	Unincorporated Areas of Fairfax County.
	Approximately 1.0 mile upstream of the confluence with Pike Branch.	None	*30	
Dogue Creek	At the confluence with the Potomac River	*9	*10	Unincorporated Areas of Fairfax County.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Potomac River	Approximately 1.5 miles upstream of the Potomac River at Mount Vernon Road. Approximately 1,140 feet east of Carriage House Court. Approximately 1,250 feet south of intersection River Drive and Oak Grove Street.	*9 *9 *9	*10 *10 *10	Unincorporated Areas of Fairfax County.

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ADDRESSES

Unincorporated Areas of Fairfax County

Maps are available for inspection at 12055 Government Center Parkway, Suite 659, Fairfax, VA 22035.

Randolph County, West Virginia, and Incorporated Areas

Backwater flooding from Tygart Valley River.	Approximately at the area bounded by Robert E Lee Avenue, Whisperwood Drive and the railroad.	+1913	+1914	City of Elkins.
	Approximately at corporate limits paralleling Sunset Drive.	+1912	+1914	
Craven Run	Approximately at downstream corporate limits of City of Elkins.	+1909	+1913	City of Elkins.
	Approximately 630 feet downstream of Virginia Avenue.	+1912	+1913	

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ADDRESSES

City of Elkins

Maps are available for inspection at City Hall, 2nd Floor, Elkins, WV 26241.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Deborah S. Ingram,

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

[FR Doc. E9-21607 Filed 9-4-09; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1061]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance)

Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance

premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 7, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1061, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility

Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Mason County, Illinois, and Incorporated Areas				
Illinois River	Approximately 0.2 miles upstream of 750 N. extended	+451	+452	Unincorporated Areas of Mason County.
	Approximately 0.74 miles upstream of Walnut Street extended.	+450	+452	
	Approximately 0.12 miles upstream of 2500 N. extended.	+455	+454	
Sangamon River	Approximately 0.1 miles upstream of 2600 N	+455	+454	Unincorporated Areas of Mason County.
	Approximately 0.15 miles upstream of County Road 800 E.	None	+456	
	Approximately 0.3 miles upstream of State Highway 78	None	+461	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

Unincorporated Areas of Mason County

Maps are available for inspection at the Mason County Courthouse, Zoning Office, 125 North Plum Street, Havana, IL 62644.

Saline County, Kansas, and Incorporated Areas

East Dry Creek Tributary ...	Approximately 0.7 mile downstream of Missouri Pacific Railroad.	None	+1203	City of Salina, Unincorporated Areas of Saline County.
Old Smokey Hill River Channel.	Approximately 0.9 mile upstream of Holmes Road	None	+1264	
	Approximately 1.5 miles downstream of Indiana Avenue, at the levee.	None	+1207	Unincorporated Areas of Saline County, City of Salina.
	Approximately 0.5 mile upstream of Ohio Street	None	+1225.	

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ADDRESSES

City of Salina

Maps are available for inspection at 300 West Ash Street, Salina, KS 67402.

Unincorporated Areas of Saline County

Maps are available for inspection at 300 West Ash Street, Salina, KS 67402.

Montgomery County, Kentucky, and Incorporated Areas

Hinkston Creek	Approximately 500 feet upstream of Hinkston Pike (KY 1991).	None	+911	Unincorporated Areas of Montgomery County, City of Mt. Sterling.
	Approximately 100 feet downstream of Calk Lane	None	+962	

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ADDRESSES

City of Mt. Sterling

Maps are available for inspection at 33 North Maysville Street, Mount Sterling, KY 40353.

Unincorporated Areas of Montgomery County

Maps are available for inspection at 1 Court Street, Mount Sterling, KY 40353.

Essex County, Massachusetts (All Jurisdictions)

Atlantic Ocean	Along the shoreline, approximately 350 feet east of the end of 55th Street.	+13	+18	City of Newburyport.
	Along the shoreline, approximately 575 feet north of the intersection of Northern Boulevard and 82nd Street.	+10	+22	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Atlantic Ocean	Along the shoreline, approximately 850 feet east of the intersection of Page Road and Phillips Street.	+9	+16	Town of Newbury, City of Gloucester, Town of Ipswich, Town of Manchester, Town of Marblehead, Town of Nahant, Town of Rowley, Town of Swampscott.
	Along the shoreline, approximately 3,000 feet south of the intersection of Lynnway and Nahant Road.	+1	+17	
Atlantic Ocean	Along the shoreline, approximately 150 feet south of State Beach Road.	+11	+12	Town of Salisbury.
	Along the shoreline, approximately 60 feet east of the intersection of Liberty Street and North End Boulevard.	None	+20	
Ipswich River	Approximately 150 feet northeast of the Eastern end of Sargent Street.	None	+38	City of Beverly.
	Approximately 1,000 feet north of the intersection of Dodge Street and Norwoods Pond Road.	None	+38	
Long Causeway Brook	Approximately 800 feet north of the intersection of Route 1A and North Edge Road.	None	+21	Town of Ipswich.
	Approximately 4,500 feet southwest of the intersection of Route 1A and North Edge Road.	None	+21	
Shawsheen River	Approximately 900 feet east of the intersection of Highway 495 and Route 28.	+34	+36	Town of Andover, City of Lawrence, Town of North Andover.
	Approximately 2,500 feet southwest of Burt Road and Biotechnology Drive.	+75	+77	

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ADDRESSES

City of Beverly

Maps are available for inspection at City Hall, 191 Cabot Street, Beverly, MA 01915.

City of Gloucester

Maps are available for inspection at City Hall, 9 Dale Avenue, Gloucester, MA 01930.

City of Lawrence

Maps are available for inspection at City Hall, 200 Common Street, Lawrence, MA 01840.

City of Newburyport

Maps are available for inspection at City Hall, 60 Pleasant Street, Newburyport, MA 01950.

Town of Andover

Maps are available for inspection at the Town Offices, 36 Bartlet Street, Andover, MA 01810.

Town of Ipswich

Maps are available for inspection at the Town Hall, 25 Green Street, Ipswich, MA 01938.

Town of Manchester

Maps are available for inspection at the Town Hall, 10 Central Street, Manchester-by-the-Sea, MA 01944.

Town of Marblehead

Maps are available for inspection at Abbot Hall, 188 Washington Street, Marblehead, MA 01945.

Town of Nahant

Maps are available for inspection at the Town Hall, 334 Nahant Road, Nahant, MA 01908.

Town of Newbury

Maps are available for inspection at the Town Hall, 25 High Road, Newbury, MA 01951.

Town of North Andover

Maps are available for inspection at the Town Hall, 120 Main Street, North Andover, MA 01845.

Town of Rowley

Maps are available for inspection at the Town Hall, 139 Main Street, Rowley, MA 01969.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Town of Salisbury

Maps are available for inspection at the Town Hall, 5 Beach Road, Salisbury, MA 01952.

Town of Swampscott

Maps are available for inspection at the Town Hall, 22 Monument Avenue, Swampscott, MA 01907.

Eaton County, Michigan, and Incorporated Areas

Carrier Creek	At the confluence with Moon and Hamilton County Drain. Approximately 550 feet upstream of Grand Trunk Western Railroad.	+841 None	+837 +867	Charter Township of Delta.
Grand River	Approximately 5,490 feet upstream of the divergence of Grand River Bypass. Approximately 5,850 feet upstream of the divergence of Grand River Bypass.	None None	+875 +875	Township of Hamlin.
Miller Creek	Approximately 50 feet upstream of Willow Highway	+807	+808	Charter Township of Delta.
Miller Creek Overflow Channel.	Approximately 700 feet upstream of Ireland Drive	+850	+851	Charter Township of Delta.
	Approximately 800 feet upstream of the convergence with Miller Creek. Approximately 1,760 feet upstream of the convergence with Miller Creek.	+823 +825	+822 +828	
Moon and Hamilton County Drain.	Approximately 1,900 feet upstream of Willow Highway	+813	+812	Charter Township of Delta.
	Approximately 4,200 feet upstream of Millett Highway	+872	+869	

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ADDRESSES

Charter Township of Delta

Maps are available for inspection at 7710 West Saginaw Highway, Delta, MI 48917.

Township of Hamlin

Maps are available for inspection at 6463 South Clinton Trail, Eaton Rapids, MI 68827.

Buffalo County, Nebraska, and Incorporated Areas

Airport Draw	At the confluence with Wood River	None	+2119	Unincorporated Areas of Buffalo County, City of Kearney.
Glenwood Park Creek	Just downstream of East 56th Street	None	+2179	Unincorporated Areas of Buffalo County, City of Kearney.
	At the confluence with Wood River	None	+2140	
Kearney Canal	Just downstream of West 39th Street	None	+2229	City of Kearney.
	Approximately 1.0 mile above Cottonmill Avenue	None	+2220	
North Channel Platte River (eastern portion of stream, eastern side of City of Kearney).	Approximately 0.9 miles downstream of County Highway 36 (Cherry Avenue).	None	+2114	City of Kearney.
	Approximately 200 feet downstream of County Highway 36 (Cherry Avenue).	None	+2118	
North Channel Platte River (western portion of stream, west of City of Kearney).	Approximately 0.5 miles downstream of 62nd Avenue	None	+2165	City of Kearney.
Platte River (eastern portion of stream, southeast of the City of Kearney).	Just downstream of 62nd Avenue	None	+2169	City of Kearney.
	Approximately 2.9 miles downstream of State Highway 44.	None	+2122	

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		Effective	Modified	
Platte River (western portion of stream, southwest of the City of Kearney).	Approximately 2.1 miles downstream of State Highway 44.	None	+2128	Unincorporated Areas of Buffalo County, City of Kearney.
	Approximately 2.1 miles upstream of State Highway 44	None	+2157	
Shallow flooding from North Dry Creek Ditch.	Approximately 3.3 miles upstream of State Highway 44	None	+2165	City of Kearney.
	Approximately 0.6 miles upstream of confluence with Platte River.	None	+2155	
Wood River	Approximately 1.2 miles upstream of confluence with Platte River.	None	+2156	Unincorporated Areas of Buffalo County.
	Approximately 2.0 miles downstream of Imperial Avenue.	None	+2113	
	Approximately 0.4 miles upstream of Highway 10	+2147	+2146	

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ADDRESSES

City of Kearney

Maps are available for inspection at 18 East 22nd Street, Kearney, NE 68847.

Unincorporated Areas of Buffalo County

Maps are available for inspection at 9730 Antelope Avenue, Kearney, NE 68847.

Roosevelt County, New Mexico, and Incorporated Areas

17th and 18th Street Shallow Flooding.	Flooding effects extending southward approximately 2,250 feet from E 18th street.	None	+4001	Unincorporated Areas of Roosevelt County.
	Flooding effects extending southward approximately 2,250 feet from E 18th street.	None	+4003	

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ADDRESSES

Unincorporated Areas of Roosevelt County

Maps are available for inspection at 109 West 1st Street, Portales, NM 88130.

Brown County, South Dakota, and Incorporated Areas

James River	Approximately 3.8 miles downstream of 147th Street ...	None	+1275	Unincorporated Areas of Brown County.
	Approximately 6,260 feet upstream of 101st Street	None	+1296	

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Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

Unincorporated Areas of Brown County

Maps are available for inspection at 25 Market Street, Aberdeen, SD 57401.

Cheatham County, Tennessee, and Incorporated Areas

Big Bartons Creek	Approximately 3.8 miles upstream of the confluence with Cumberland River.	None	+397	Unincorporated Areas of Cheatham County.
	Approximately 1.1 miles upstream of the confluence with Cumberland River.	None	+397	

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ADDRESSES

Unincorporated Areas of Cheatham County

Maps are available for inspection at the Building Commissioner's Office, 210 South Main Street, Ashland City, TN 37015.

Burnet County, Texas, and Incorporated Areas

Colorado River	Approximately 0.88 miles upstream of confluence with Wolf Hollow Creek.	+160	+163	Unincorporated Areas of Burnet County.
	At the confluence of Varnhagan Creek	+770	+768	

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ADDRESSES

Unincorporated Areas of Burnet County

Maps are available for inspection at 220 South Pierce Street, Burnet, TX 78611.

Karnes County, Texas, and Incorporated Areas

Escondido Creek	Approximately 700 feet downstream of confluence with Nichols Creek.	+259	+258	Unincorporated Areas of Karnes County.
	Approximately 450 feet upstream of confluence with Panther Creek.	None	+274	
Marcelinas Creek	Approximately 730 feet upstream of confluence with Tributary 1 to Marcelinas Creek Watershed.	None	+300	Unincorporated Areas of Karnes County.
	Approximately 830 feet upstream of confluence with Tributary 8 to Marcelinas Creek Watershed.	None	+307	
Ojo de Agua Creek	Approximately 1,050 feet downstream of Farm to Market 81.	None	+262	Unincorporated Areas of Karnes County.
	Approximately 860 feet upstream of confluence with Tributary 9 to Ojo de Agua Watershed.	None	+287	
San Antonio River	Approximately 460 feet downstream of confluence with Marcelinas Creek.	None	+300	Unincorporated Areas of Karnes County.
	Approximately 1,440 feet downstream of confluence with Tributary 199 to Lower San Antonio River Watershed.	None	+304	

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		Effective	Modified	

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Depth in feet above ground.

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ADDRESSES

Unincorporated Areas of Karnes County

Maps are available for inspection at the Karnes County Courthouse, 101 North Panna Maria, Karnes City, TX 78118.

Kendall County, Texas, and Incorporated Areas

Cibolo Creek	Approximately 2 miles upstream of the confluence with Balcones Creek.	None	+1301	Unincorporated Areas of Kendall County.
	Approximately 2.6 miles upstream of the confluence with Balcones Creek.	None	+1309	
Guadalupe River	Just upstream of County Highway FM 3351	None	+1122	Unincorporated Areas of Kendall County.
Ranger Creek	Approximately 1,750 feet upstream of Gourly Road	None	+1164	Unincorporated Areas of Kendall County.
	Approximately 2.5 miles upstream of the confluence with Cibolo Creek.	None	+1552	
Spring Creek	Approximately 4.2 miles upstream of the confluence with Cibolo Creek.	None	+1655	Unincorporated Areas of Kendall County.
	At the confluence with Guadalupe River	None	+1150	
	Approximately 0.6 miles downstream of the confluence with Black Creek.	None	+1176	

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ADDRESSES

Unincorporated Areas of Kendall County

Maps are available for inspection at 201 East San Antonio Drive, Suite 122, Boerne, TX 78006.

Walker County, Texas, and Incorporated Areas

Baldwin Creek	Approximately 2.7 miles downstream of County Highway FM 247.	None	+244	Unincorporated Areas of Walker County.
	Approximately 1.6 miles downstream of County Highway FM 247.	None	+261	
Caney Creek	Approximately 0.6 miles upstream of County Highway FM 2296.	None	+354	Unincorporated Areas of Walker County.
Crabb Creek	Approximately 0.6 miles downstream of Evelyn Lane ...	None	+374	Unincorporated Areas of Walker County.
	Approximately 475 feet upstream of North Rocky Creek.	None	+257	
East Fork (Tanyard Branch)	Approximately 500 feet upstream of Interstate Highway North US Highway 190.	None	+287	Unincorporated Areas of Walker County.
	Approximately 0.5 miles upstream of confluence with Tanyard Branch.	None	+291	
Hadley Creek	Approximately 0.9 miles upstream of confluence with Tanyard Branch.	None	+298	Unincorporated Areas of Walker County.
	Just downstream of Rosenwall Road	None	+250	
	Just upstream of the confluence with North Rocky Creek.	None	+285	

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		Effective	Modified	
Hendricks Lake	At the confluence with Town Branch	None	+273	Unincorporated Areas of Walker County.
	Approximately 700 feet downstream of County Highway FM 2821.	None	+284	
Mays Creek	Approximately 0.4 miles upstream of County Highway FM 2929.	None	+320	Unincorporated Areas of Walker County.
	Approximately 2.5 miles upstream of County Highway FM 2929.	None	+355	
McDonald Creek	Approximately 0.4 miles upstream of West Sunset Drive.	None	+293	Unincorporated Areas of Walker County.
McGary Creek	Just downstream of Spring Drive	None	+357	Unincorporated Areas of Walker County.
	Approximately 1.8 miles downstream of the confluence with Tributary 6 (McGary Creek).	None	+279	
	Approximately 1,750 feet downstream of the confluence with Tributary 6 (McGary Creek).	None	+289	
	Approximately 0.8 miles downstream of Timberwilde Drive.	None	+318	
Parker Creek	Approximately 0.9 miles upstream of Timberwilde Drive	None	+351	Unincorporated Areas of Walker County.
	Approximately 0.6 miles upstream from Tributary Number 8 (Parker Creek).	None	+212	
Prairie Branch	At the confluence with Town Branch	None	+260	Unincorporated Areas of Walker County.
	At the confluence with Raven Lake	None	+287	
Robinson Creek	Just downstream of Camellia Drive	None	+307	Unincorporated Areas of Walker County.
	Approximately 1,250 feet upstream of Robinson Road	None	+283	
Scott Branch	Approximately 0.6 miles downstream of Veterans Memorial Highway.	None	+333	Unincorporated Areas of Walker County.
	At the confluence with Thickett Branch	None	+256	
Shepherd Creek	Approximately 1,250 feet upstream of the confluence with Thickett Branch.	None	+261	Unincorporated Areas of Walker County.
	Approximately 0.71 miles upstream of County Highway FM 2296.	None	+317	
Tanyard Branch	Approximately 1.5 miles upstream of the confluence with Tributary 3.	None	+381	Unincorporated Areas of Walker County.
	Approximately 500 feet downstream of the confluence with Tributary Number 2 (Tanyard Branch).	None	+224	
Thickett Branch	Approximately 0.5 miles upstream of US Highway 190	None	+363	Unincorporated Areas of Walker County.
	Approximately 500 feet downstream of the confluence with Scott Branch.	None	+256	
Town Branch	Approximately 800 feet upstream of the confluence with Scott Branch.	None	+260	Unincorporated Areas of Walker County.
	At the confluence with Parker Creek	None	+260	
Tributary 1 (Robinson Creek).	Approximately 1,200 feet upstream of the confluence with Hendricks Lake.	None	+277	Unincorporated Areas of Walker County.
	At the confluence with Robinson Creek	None	+294	
Tributary 2 (Tanyard Branch).	Approximately 400 feet downstream of Gazebo Street	None	+329	Unincorporated Areas of Walker County.
	At the confluence with Tanyard Branch	None	+224	
Tributary 5 (McGary Creek)	Approximately 1,200 feet upstream of Robinson Road	None	+253	Unincorporated Areas of Walker County.
	Approximately 1,250 feet upstream of the confluence with McGary Creek.	None	+323	
Tributary 6 (McGary Creek)	Just downstream of Timberwilde Drive	None	+329	Unincorporated Areas of Walker County.
	Approximately 0.9 miles upstream of the confluence with McGary Creek.	None	+301	
Tributary 9 (Sheperd Creek).	Approximately 2.17 miles upstream of the confluence with McGary Creek.	None	+319	Unincorporated Areas of Walker County.
	At the confluence with Sheperd Creek	None	+332	
Tributary Number 7 (Hadley Creek).	Approximately 900 feet downstream of Four Notch Road.	None	+347	Unincorporated Areas of Walker County.
	Approximately 1,200 feet downstream of Cauthen Drive.	None	+256	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Tributary Number 8 (Parker Creek).	Approximately 1.3 miles upstream of Cauthen Drive	None	+275	Unincorporated Areas of Walker County.
	Approximately 0.9 miles upstream of the confluence with Pain Branch.	None	+218	
Wayne Creek	Approximately 0.9 miles downstream of Albritton Road	None	+231	Unincorporated Areas of Walker County.
	Approximately 1,750 feet downstream of Forest Service Road # 236A.	None	+259	
	Approximately 1.1 miles upstream of the confluence with Ford Branch.	None	+298	

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+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Walker County

Maps are available for inspection at 1100 University Avenue, Huntsville, TX 77320.

Dickenson County, Virginia, and Incorporated Areas

Frying Pan Creek	At the confluence with Russell Fork	None	+1293	Unincorporated Areas of Dickenson County.
	Approximately 1,400 feet downstream from the intersection of Sandlick Road and Frying Pan Road.	None	+1316	
Greenbriar Creek	At the confluence with Russell Prater Creek	None	+1418	Unincorporated Areas of Dickenson County.
	Approximately 1,400 feet downstream from the intersection of Winchester Drive and Greenbriar Road.	None	+1426	
Lick Creek	At the confluence with Russell Fork	None	+1289	Unincorporated Areas of Dickenson County.
	Approximately 1,000 feet upstream from the intersection of Aily Road and Ransom Road.	None	+1559	
McClure Creek	Approximately 1,800 feet upstream of the confluence with Open Fork and McClure River.	None	+1520	Unincorporated Areas of Dickenson County.
	Approximately 1,100 feet downstream from the intersection of Wakenva Hollow Road and Dante Mountain Road.	None	+1598	
McClure River	At the confluence with Russell Fork	+1264	+1273	Unincorporated Areas of Dickenson County, Town of Clinchco, Town of Haysi.
	Approximately 300 feet downstream from the intersection of Doctor Ralph Stanley Highway and Dante Mountain Road.	+1514	+1518	
Mill Creek	At the confluence with McClure River	None	+1403	Unincorporated Areas of Dickenson County, Town of Clinchco.
	Approximately 400 feet upstream of Chevy Drive	None	+1622	
Open Fork	At the confluence with McClure River	None	+1518	Unincorporated Areas of Dickenson County.
	Approximately 1,000 ft upstream from the intersection of Neece Creek Road and Brushy Ridge Road.	None	+1581	
Russell Fork	Approximately 1,300 feet downstream of Bartlick Road	None	+1190	Unincorporated Areas of Dickenson County, Town of Haysi.
Russell Prater Creek	Approximately 160 feet downstream of Sandlick Road	None	+1437	Unincorporated Areas of Dickenson County, Town of Haysi.
	At the confluence with Russell Fork	+1265	+1275	
	At the confluence with Greenbriar Creek	None	+1418	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Spring Fork	Just downstream of the Railroad Crossing	None	+1557	Unincorporated Areas of Dickenson County.
	Approximately 850 feet upstream from intersection of Rebel Drive and Doctor Ralph Stanley Highway.	None	+1577	

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+ North American Vertical Datum.

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ADDRESSES

Town of Clinchco

Maps are available for inspection at 156 Main Street, Clinchco, VA 24226.

Town of Haysi

Maps are available for inspection at 322 Haysi Main Street, Haysi, VA 24256.

Unincorporated Areas of Dickenson County

Maps are available for inspection at 293 Clintwood Main Street, Clintwood, VA 24228.

Fayette County, West Virginia, and Incorporated Areas

Smithers Creek	Approximately 700 feet downstream of Carbondale Road.	None	+640	Unincorporated Areas of Fayette County.
	Approximately 550 feet upstream of Carbondale Road	None	+651	

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+ North American Vertical Datum.

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ADDRESSES

Unincorporated Areas of Fayette County

Maps are available for inspection at the Fayette County Building, Safety Department, 100 Court Street, Fayetteville, WV 25840.

Oconto County, Wisconsin, and Incorporated Areas

Anderson Lake	Entire shoreline	None	+860	Unincorporated Areas of Oconto County.
Bass Lake/Crooked Lake/ Gilkey Lake.	Entire shoreline	None	+951	Unincorporated Areas of Oconto County.
Brookside Creek	Approximately 0.41 miles upstream of US Highway 41	+615	+616	Unincorporated Areas of Oconto County.
Christie Brook	Approximately 655 feet upstream of Cross Road	None	+681	City of Gillett, Unincorporated Areas of Oconto County.
	Approximately 1.3 miles downstream of Quarterline Road.	None	+740	
City of Oconto Tributary No. 4.	Approximately 0.3 miles upstream of Klaus Lake Road	None	+819	City of Oconto, Unincorporated Areas of Oconto County.
	Approximately 344 feet downstream of County Highway S.	None	+591	
Hayes Creek	Just upstream of Cook Road	+594	+595	Unincorporated Areas of Oconto County.
	Just upstream of Hayes Road	+830	+832	
Jones Creek	Just downstream of County Highway R	+843	+844	Village of Lena, Unincorporated Areas of Oconto County.
	Just upstream of US Highway 141	None	+697	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Kirchner Creek	Approximately 0.8 miles upstream of Harley Street	None	+708	Unincorporated Areas of Oconto County.
	Approximately 225 feet downstream of Sampson Road	None	+599	
Little Suamico River	Approximately 1.1 miles downstream of East Frontage Road.	None	+633	Unincorporated Areas of Oconto County, Village of Pulaski.
	Approximately 500 feet upstream of Cross Road	None	+644	
McCasin Brook	Approximately 0.2 miles upstream of 4th Avenue N	+793	+793	Unincorporated Areas of Oconto County.
	Approximately 410 feet upstream of Old 32 Road	None	+1174	
North Branch Oconto River	Immediately downstream of Townsend Dam Road	None	+1314	Unincorporated Areas of Oconto County.
	Approximately 0.8 miles upstream of Riverside Road ...	+1159	+1161	
Oconto River Tributary No. 2.	Approximately 1.5 miles upstream of Riverside Road ...	+1183	+1185	City of Oconto.
	Just upstream of Mill Street	+591	+590	
Oconto River Tributary No. 22.	Approximately 95 feet downstream of Charles Street ...	+595	+598	City of Oconto Falls, Unincorporated Areas of Oconto County.
	Approximately 150 feet downstream of South Maple Street.	+642	+641	
Pensaukee River	Approximately 0.6 miles upstream of South Flatley Avenue.	None	+742	Unincorporated Areas of Oconto County.
	Approximately 0.3 miles upstream of County Highway J.	+621	+620	
Round Lake	Approximately 428 feet downstream of Safian Road	+759	+760	Unincorporated Areas of Oconto County.
	Entire shoreline	None	+827	
Spring Creek	Just downstream of US Highway 141	+652	+653	Unincorporated Areas of Oconto County.
	Approximately 0.7 miles upstream of County Highway E.	None	+717	
Spring Creek Tributary No. 6.	At the confluence with Spring Creek	+703	+706	Unincorporated Areas of Oconto County.
Tibbet Creek	Approximately 450 feet upstream of Burdosh Road	+713	+717	Unincorporated Areas of Oconto County.
	Approximately 600 feet downstream of Rost Road	None	+585	
Town Creek	Approximately 1.7 miles upstream of Lade Beach Road.	None	+627	Unincorporated Areas of Oconto County.
	Approximately 0.6 miles downstream of Palmer Lane ..	None	+920	
Waupee Creek	Just downstream of State Highway 32/64	None	+980	Unincorporated Areas of Oconto County.
	Just upstream of State Highway 32/64	None	+859	
Wescott Lake	Immediately downstream of Waupee Dam	+936	+937	Unincorporated Areas of Oconto County.
	Entire shoreline	None	+845	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Gillett

Maps are available for inspection at 150 North McKenzie Avenue, Gillett, WI 54124.

City of Oconto

Maps are available for inspection at 1210 Main Street, Oconto, WI 54153.

City of Oconto Falls

Maps are available for inspection at 500 North Chestnut Avenue, Oconto Falls, WI 54154.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Unincorporated Areas of Oconto County

Maps are available for inspection at 301 Washington Street, Oconto, WI 54153.

Village of Lena

Maps are available for inspection at 117 East Main Street, Lena, WI 54139.

Village of Pulaski

Maps are available for inspection at 421 South Saint Augustine Street, Pulaski, WI 54162-0320.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Deborah S. Ingram,

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

[FR Doc. E9-21469 Filed 9-4-09; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1065]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 7, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1065, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood

insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act.

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Colfax County, New Mexico, and Incorporated Areas

Ranton Creek	Approximately 450 feet downstream of Kiowa Avenue.	None	+6541	Unincorporated Areas of Colfax County.
	Approximately 150 feet downstream of Kiowa Avenue.	None	+6547	

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+ North American Vertical Datum.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES**Unincorporated Areas of Colfax County**

Maps are available for inspection at the Floodplain Manager's Office, 116 South 3rd Street, Raton, NM 87740.

Luna County, New Mexico, and Incorporated Areas

Mimbres River	Approximately 2.1 miles upstream of State Highway 549 Southeast.	+4152	+4151	Unincorporated Areas of Luna County.
	Approximately 1,500 feet downstream of Interstate Highway 10.	+4280	+4282	

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ADDRESSES**Unincorporated Areas of Luna County**

Maps are available for inspection at 201 East Cody Street, Deming, NM 88030.

Taos County, New Mexico, and Incorporated Areas

Bitter Creek	At the confluence with Red River	+8654	+8659	Town of Red River, Unincorporated Areas of Taos County.
Red River	Approximately 1,150 feet upstream of High Creek ..	None	+8696	Town of Red River, Unincorporated Areas of Taos County.
	Just upstream of High Cost Trail	+8608	+8612	
Rio Lucero	Approximately 1.08 miles downstream of Goose Lake Trail 66.	None	+8782	Pueblo of Taos.
	At the confluence with Rio Pueblo De Taos	None	+6886	
Rio Pueblo De Taos	Approximately 0.56 miles upstream of Paseo Del Pueblo Norte Road.	None	+6995	Town of Taos, Pueblo of Taos.
	Just upstream of Karavas Road	None	+6886	
	Approximately 600 feet downstream of Paseo Del Pueblo Norte Road.	None	+6952	

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+ North American Vertical Datum.

Depth in feet above ground.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
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ADDRESSES

Pueblo of Taos

Maps are available for inspection at the Floodplain Administrator's Office, 105 Albright Street, Suite A, Taos, NM 87571.

Town of Red River

Maps are available for inspection at 100 East Main Street, Red River, NM 87558.

Town of Taos

Maps are available for inspection at the Planning Department, 400 Camino De La Placita, Taos, NM 87571.

Unincorporated Areas of Luna County

Maps are available for inspection at the Floodplain Administrator's Office, 105 Albright Street, Suite A, Taos, NM 87571.

Cannon County, Tennessee, and Incorporated Areas

East Fork Stones River	Approximately 80 feet downstream of confluence with Lehman Branch.	None	+690	Unincorporated Areas of Cannon County.
	Approximately 40 feet upstream of Dolittle Road	None	+706	

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ADDRESSES

Unincorporated Areas of Cannon County

Maps are available for inspection at 1 Courthouse Square, Woodbury, TN 37190.

Stewart County, Tennessee, and Incorporated Areas

Tennessee River	County Boundary Between Houston/Stewart Counties, Tennessee (approximately River Mile 74.2).	None	+375	Unincorporated Areas of Stewart County.
	From the Kennedy/Tennessee state boundary (approximately River Mile 49.2).	None	+375	

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ADDRESSES

Unincorporated Areas of Stewart County

Maps are available for inspection at 226 Lakeview Drive, Dover, TN 37058.

DeWitt County, Texas, and Incorporated Areas

Gohlke Creek	Just upstream of Old Clinton Road	None	+166	Unincorporated Areas of DeWitt County.
	Approximately 800 feet downstream of West Heaton Street.	None	+167	
SCS Channel	Approximately 1.1 miles downstream of Old Cheapside Road.	None	+178	Unincorporated Areas of DeWitt County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 650 feet downstream of Terrell Street.	None	+184	

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ADDRESSES

Unincorporated Areas of DeWitt County

Maps are available for inspection at 307 North Gonzalez Street, Cuero, TX 77954.

Medina County, Texas, and Incorporated Areas

Burnt Boot Creek	Approximately 1,570 feet downstream of the intersection of Thompson Avenue.	None	+634	Unincorporated Areas of Medina County, City of Devine.
	Approximately 0.54 miles upstream of the intersection of RM 92.	None	+700	
Chacon Creek	Approximately 1.46 miles downstream of the intersection of Highway 81.	None	+660	Unincorporated Areas of Medina County, City of Natalia.
	Approximately 698 feet upstream of the intersection of RM 139.	None	+717	
East Branch of Live Oak Creek.	Approximately 2.28 miles downstream of the intersection of Highway 90.	None	+847	Unincorporated Areas of Medina County, City of Hondo.
	Approximately 2.02 miles upstream of the intersection of Highway 90.	None	+913	
Elm Slough	Approximately 1.13 miles downstream of CR 446 ...	None	+803	Unincorporated Areas of Medina County, City of Hondo.
	Approximately 1,987 feet upstream of Co. Highway 443.	None	+888	
Flat Creek	Approximately 2.4 miles downstream of the intersection of Highway 90.	None	+720	Unincorporated Areas of Medina County, City of Castroville.
	Approximately 1.7 miles upstream of the intersection of Highway 90.	None	+784	
Fort Ewell Creek	Just upstream of the confluence of Chacon Creek	None	+694	Unincorporated Areas of Medina County, City of Natalia.
Hondo Creek	Just downstream of the intersection of RM 136	None	+701	Unincorporated Areas of Medina County.
	Approximately 0.50 miles downstream of CR 4526	None	+839	
Hondo Creek Tributary	Approximately 1.29 miles upstream of Vandenburg Road.	None	+917	Unincorporated Areas of Medina County.
	Approximately 873 feet downstream of Highway 173.	None	+862	
Kempf Creek	Approximately 0.62 miles upstream of Highway 173	None	+878	Unincorporated Areas of Medina County, City of Castroville.
	Just upstream of the confluence of Medina River ...	None	+758	
Little Live Oak Creek and flooding effects.	Approximately 215 feet downstream of the intersection of Farm Road 471.	None	+778	Unincorporated Areas of Medina County, City of Hondo.
	Approximately 1.41 miles downstream of the intersection of CR 532.	None	+812	
Little Sous Creek	Approximately 1,011 feet upstream of 19th Street ..	None	+897	Unincorporated Areas of Medina County.
	Approximately 4,009 feet downstream of the intersection of Highway 90.	None	+737	
Medina River	Approximately 2.2 miles upstream of the intersection of Highway 90.	None	+827	Unincorporated Areas of Medina County, City of Castroville.
	Approximately 0.60 miles downstream of the intersection of Lacoste Road.	None	+689	
	Approximately 1.8 miles upstream of the confluence of Kempf Creek.	None	+767	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Parkers Creek	Approximately 2.71 miles downstream of the intersection of FM 2200.	None	+826	Unincorporated Areas of Medina County.
	Approximately 1.61 miles upstream of the intersection of Highway 90.	None	+914	
Polecat Creek	Approximately 0.55 miles downstream of the intersection of Dhanis Street.	None	+708	Unincorporated Areas of Medina County, City of LaCoste.
	Approximately 503 feet upstream of the intersection of FM 471.	None	+722	
San Francisco Perez Creek	Approximately 0.49 miles downstream of the intersection of RM 101.	None	+646	Unincorporated Areas of Medina County, City of Devine.
	Approximately 1.1 miles upstream of the intersection of RM 90.	None	+699	
Seco Creek	Approximately 5.94 miles downstream of the intersection of CR 512.	None	+838	Unincorporated Areas of Medina County.
	Approximately 4.1 miles upstream of the intersection of CR 428.	None	+935	
South Fork San Geronimo Creek.	Approximately 786 feet downstream of the confluence of Unnamed Tributary 1 to South Fork San Geronimo Creek.	None	+1324	Unincorporated Areas of Medina County.
	Approximately 947 feet upstream of the confluence of Unnamed Tributary 2 to South Fork San Geronimo Creek.	None	+1407	
South Polecat Creek	Approximately 0.42 miles downstream of the intersection of Dhanis Street.	None	+708	Unincorporated Areas of Medina County, City of LaCoste.
	Approximately 0.44 miles upstream of the intersection of Contis Avenue.	None	+730	
Tehuacana Creek	Approximately 1.24 miles downstream of the confluence of East Tehuacana Creek.	None	+623	Unincorporated Areas of Medina County.
	Just downstream of the confluence of West Fork Tehuacana Creek.	None	+660	
Unnamed Tributary 1 to San Geronimo Creek.	Approximately 1.4 miles upstream of the confluence of San Geronimo Creek.	None	+1360	Unincorporated Areas of Medina County.
	Approximately 2.6 miles upstream of the confluence of San Geronimo Creek.	None	+1465	
Unnamed Tributary 1 to South Fork San Geronimo Creek.	Just upstream of the confluence of South Fork San Geronimo Creek.	None	+1345	Unincorporated Areas of Medina County.
	Approximately 1,844 feet upstream of the confluence of South Fork San Geronimo Creek.	None	+1371	
Unnamed Tributary 2 to South Fork San Geronimo Creek.	Just upstream of the confluence of South Fork San Geronimo Creek.	None	+1401	Unincorporated Areas of Medina County.
	Approximately 1,069 feet upstream of the confluence of South Fork San Geronimo Creek.	None	+1412	
Unnamed Tributary 2 to San Geronimo Creek.	Approximately 779 feet upstream of the intersection of RT 37.	None	+1295	Unincorporated Areas of Medina County.
	Approximately 0.65 miles upstream of the intersection of RT 37.	None	+1339	
Unnamed Tributary to Medina Diversion Reservoir.	Approximately 1,514 feet downstream of the confluence of Unnamed Tributary to Unnamed Tributary to Medina Diversion Reservoir.	None	+1159	Unincorporated Areas of Medina County.
	Approximately 1.4 miles upstream of the confluence of Unnamed Tributary to Unnamed Tributary to Medina Diversion Reservoir.	None	+1242	
Unnamed Tributary to Unnamed Tributary to Medina Diversion Reservoir.	Just upstream of the confluence of Unnamed Tributary to Medina Diversion Reservoir.	None	+1173	Unincorporated Areas of Medina County.
	Approximately 0.8 miles upstream of the confluence of Unnamed Tributary to Medina Diversion Reservoir.	None	+1264	
West Branch Little Live Oak Creek.	Approximately 0.57 miles downstream of intersection of CR 532.	None	+832	Unincorporated Areas of Medina County, City of Hondo.
	Approximately 0.39 miles upstream of the intersection of CR 530.	None	+885	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
West Fork Tehuacana Tributary.	Just upstream of the confluence of West Fork Tehuacana Creek.	None	+668	Unincorporated Areas of Medina County.
West Prong Atascosa River	Approximately 0.62 miles upstream of CR 732	None	+699	Unincorporated Areas of Medina County, City of Lytle.
	Approximately 295 feet downstream of the intersection of Main Street.	None	+693	
West Tehuacana Creek	Just downstream of the intersection of CR 681	None	+715	Unincorporated Areas of Medina County.
	Just upstream of the confluence of Tehuacana Creek.	None	+662	
	Approximately 1,258 feet upstream of the intersection of CR 732.	None	+707	

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Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Castroville

Maps are available for inspection at 703 Paris Street, Castroville, TX 78009.

City of Devine

Maps are available for inspection at 303 South Teel Drive, Devine, TX 78016.

City of Hondo

Maps are available for inspection at 1600 Avenue M, Hondo, TX 78861.

City of LaCoste

Maps are available for inspection at 16004 South Front Street, LaCoste, TX 78039.

City of Lytle

Maps are available for inspection at 19325 FM 2790, Lytle, TX 78052.

City of Natalia

Maps are available for inspection at 300 3rd Street, Natalia, TX 78059.

Unincorporated Areas of Medina County

Maps are available for inspection at 709 Avenue Y, Hondo, TX 78861.

Washington County, Texas, and Incorporated Areas

Hog Branch	Approximately 2,500 feet upstream of North Blue Bell Road.	None	+240	Unincorporated Areas of Washington County.
	Approximately 1,000 feet upstream of North Blue Bell Road.	None	+249	
Little Sandy Creek	Approximately 300 feet upstream of Old Independence Road.	None	+240	Unincorporated Areas of Washington County.
	Approximately 200 feet downstream of Burleson Street.	None	+278	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Washington County

Maps are available for inspection at the County Courthouse, 100 East Main, Brenham, TX 77833.

Box Elder County, Utah, and Incorporated Areas

Box Elder Creek	Just upstream of Watery Lane	None	+4236	City of Brigham City.
	Upstream end of Mayor's Pond spillway	None	+4541	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Brigham City

Maps are available for inspection at 20 North Main Street, Brigham City, UT 84302.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Deborah S. Ingram,

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

[FR Doc. E9-21471 Filed 9-4-09; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-B-1072]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be

used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 7, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1072, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) kevin.long@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act.

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Napa County, California, and Incorporated Areas				
Napa Creek	At the confluence with Napa River	+22	+18	City of Napa.
	Approximately 100 feet upstream of Jefferson Street	+35	+34	
Napa River (With Levee)	Approximately 715 feet west of intersection of State Route 121 and East Avenue.	+28	+27	City of Napa, Unincorporated Areas of Napa County.
	Approximately 1,530 feet southwest of intersection of State Route 121 and Woodland Drive.	+32	+29	
Napa River (Without Levee)	Approximately 0.5 mile downstream of Imola Avenue	+13	+12	City of Napa, Unincorporated Areas of Napa County.
	Approximately 1,230 feet downstream of confluence of Soda Creek.	+47	+46	
Napa River Oxbow Overflow	At the confluence with Tulucay Creek	+18	+16	City of Napa, Unincorporated Areas of Napa County.
	Approximately 0.39 mile upstream of Soscol Avenue	+22	+19	
Ponding Areas with elevations determined (AH Zones).	Extensive ponding areas, in roadways south of Salvador creek (lowest elevation).	None	+76	
Salvador Creek	At the confluence with Napa River	+33	+31	City of Napa, Unincorporated Areas of Napa County.
	Approximately 100 feet upstream of State Highway 29	None	+75	
Salvador Creek North Branch	At the confluence with Salvador Creek	None	+75	City of Napa, Unincorporated Areas of Napa County.
	Approximately 0.8 mile upstream of confluence with Salvador Creek.	None	+93	Unincorporated Areas of Napa County.
Salvador Creek South Branch.	At the confluence with Salvador Creek	None	+75	City of Napa.
	Approximately 1,365 feet upstream of Salvador Creek	None	+76	
Shallow Flooding (AO Zone)	Shallow flooding area, approximately 425 feet northeast of intersection of Imola Avenue and Gasser Drive.	+15	#1	City of Napa.
	Shallow flooding area, approximately 1,400 feet northeast of intersection of Imola Avenue and Gasser Drive.	+17	#2	
Tulucay Creek	At the confluence with Napa River	+18	+15	City of Napa.
	Approximately 560 feet upstream of Shurtleff Avenue	+37	+38	Unincorporated Areas of Napa County.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

**BEFs to be changed include the listed downstream and upstream BEFs, and include BEFs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BEFs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Napa

Maps are Available for inspection at the City of Napa Public Works Department, 1600 1st Street, Napa, CA 94559.

Unincorporated Areas of Napa County

Maps are available for inspection at the Napa County Public Works Department, 1195 3rd Street, Suite 201, Napa, CA 94559.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
New London County, Connecticut (All Jurisdictions)				
Four Mile River	Approximately 200 feet downstream of Breached Dam.	+11	+10	Town of Old Lyme.
Long Island Sound	Approximately 1,200 feet upstream of I-95	+51	+52	Town of East Lyme, Borough of Stonington, City of Groton, City of New London Noank Fire District, Town of Groton, Town of Old Lyme, Town of Stonington, Town of Waterford.
	Approximately 3,100 feet south of the intersection of Dimmock Road and Great Neck Road.	None	+14	
	Approximately 375 feet southwest of the intersection of Lindberg Road and Oak Street.	+13	+15	
Shunock River	Just upstream of Pendleton Hill Road	None	+29	Town of Stonington.
	Approximately 400 feet upstream of Pendleton Hill Road.	None	+30	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Stonington

Maps are available for inspection at the Borough Hall, 26 Church Street, Stonington, CT 06378.

City of Groton

Maps are available for inspection at the City Municipal Building, 295 Meridian Street, Groton, CT 06340.

City of New London

Maps are available for inspection at City Hall, 181 State Street, New London, CT 06320.

Noank Fire District

Maps are available for inspection at 45 Fort Hill Road, Groton, CT 06340.

Town of East Lyme

Maps are available for inspection at the Town Hall, 108 Pennsylvania Avenue, Niantic, CT 06357.

Town of Groton

Maps are available for inspection at the Town Hall, 175 Shennecossett Parkway, Groton, CT 06340.

Town of Old Lyme

Maps are available for inspection at the Old Lyme Memorial Town Hall, 52 Lyme Street, Old Lyme, CT 06371.

Town of Stonington

Maps are available for inspection at the Town Hall, 152 Elm Street, Stonington, CT 06378.

Town of Waterford

Maps are available for inspection at the Town Hall, 15 Rope Ferry Road, Waterford, CT 06385.

McDuffie County, Georgia, and Incorporated Areas

Boggy Gut Creek	Approximately 2.35 miles upstream of Harlem Wrens Road.	None	+429	Unincorporated Areas of McDuffie County.
	Approximately 3.13 miles upstream of Harlem Wrens Road.	None	+483	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES**Unincorporated Areas of McDuffie County**

Maps are available for inspection at 504 Railroad Street, Thomson, GA 30824.

Murray County, Georgia, and Incorporated Areas

Holly Creek	Approximately 0.77 mile downstream of CSX Railroad Approximately 0.4 mile upstream of State Highway 52/U.S. Route 76.	None +730	+717 +729	City of Chatsworth.
Mill Creek	Approximately 750 feet downstream of U.S. Highway 411. Approximately 1,300 feet upstream of State Route 286/Old CCC Camp Road.	None None	+720 +733	Town of Eton.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES**City of Chatsworth**

Maps are available for inspection at City Hall, 400 North 3rd Avenue, Chatsworth, GA 30705.

Town of Eton

Maps are available for inspection at Eton City Hall, 3464 Highway 411 North, Eton, GA 30724.

Troup County, Georgia, and Incorporated Areas

Shoal Creek	Approximately 2,350 feet upstream of Youngs Mill Road. Approximately 100 feet downstream of Hammett Road.	None None	+649 +661	City of Lagrange.
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* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES**City of Lagrange**

Maps are available for inspection at City Hall, 200 Ridley Avenue, Lagrange, GA 30240.

Nantucket County, Massachusetts (All Jurisdictions)

Atlantic Ocean	Along the shoreline, approximately 115 feet from the intersection of Bartlett Farm Road and West Macomet Road.	None	+8	Town of Nantucket.
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* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

Town of Nantucket

Maps are available for inspection at the Town Building Annex, 16 Broad Street, Nantucket, MA 02554.

Alcorn County, Mississippi, and Incorporated Areas

Elam Creek	Approximately 123 feet downstream of South Harper Road. Just downstream of County Road 701	None	+421	City of Corinth.
		None	+483	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Corinth

Maps are available for inspection at City Hall, 300 Childs Street, Corinth, MS 38834.

Yalobusha County, Mississippi, and Incorporated Areas

Enid Lake	Entire shoreline (within county)	None	+274	Unincorporated Areas of Yalobusha County, City of Water Valley. Unincorporated Areas of Yalobusha County, Town of Coffeeville.
Grenada Lake	Entire shoreline (within county)	None	+237	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Water Valley

Maps are available for inspection at City Hall, 101 Blackmur Drive, Water Valley, MS 38965.

Town of Coffeeville

Maps are available for inspection at the Town Hall, 14615 Depot Street, Coffeeville, MS 38922.

Unincorporated Areas of Yalobusha County

Maps are available for inspection at the County Courthouse, 201 Blackmur Drive, Water Valley, MS 38965.

Chittenden County, Vermont (All Jurisdictions)

Browns River	Approximately 1,500 feet upstream of Brown River Road (Route 128).	None	+354	Town of Essex, Town of Jericho, Town of Underhill, Town of Westford.
	Approximately 100 feet upstream of Stevensville Road.	+822	+819	
Winooski River	Approximately 450 feet upstream of Essex Road (Park Street) Bridge.	+284	+286	Town of Bolton, Town of Essex, Town of Jericho, Town of Richmond, Town of Williston, Village of Essex Junction.
	Approximately 1,500 feet upstream from the Central Vermont Railroad.	+352	+356	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

**BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Bolton

Maps are available for inspection at the Town Hall, 3045 Theodore Roosevelt Highway, Bolton, VT 05676.

Town of Essex

Maps are available for inspection at the Town Hall, 81 Main Street, Essex Junction, VT 05452.

Town of Jericho

Maps are available for inspection at the Town Hall, 67 Vermont Route 15, Jericho, VT 05465.

Town of Richmond

Maps are available for inspection at the Town Hall, 203 Bridge Street, Richmond, VT 05477.

Town of Underhill

Maps are available for inspection at the Town Hall, 12 Pleasant Valley, Underhill Center, VT 05490.

Town of Westford

Maps are available for inspection at the Town Office, 1713 Vermont Route 128, Westford, VT 05494.

Town of Williston

Maps are available for inspection at the Town Hall, 7900 Williston Road, Williston, VT 05495.

Village of Essex Junction

Maps are available for inspection at Lincoln Hall, 2 Lincoln Street, Essex Junction, VT 05452.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Deborah S. Ingram,

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

[FR Doc. E9-21472 Filed 9-4-09; 8:45 am]

BILLING CODE 9110-12-P

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0065]

Notice of Request for Extension of Approval of an Information Collection; Introduction of Organisms and Products Altered or Produced Through Genetic Engineering

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 introduction of organisms and products altered or produced through genetic engineering. **DATES:** We will consider all comments that we receive on or before November 9, 2009.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/>

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2009-0065, 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-2009-0065.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2009-0065, 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-2009-0065.

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 regarding regulations for the introduction of organisms and products altered or produced through genetic engineering, contact Mr. Steve Bennett, Branch Chief, Regulatory Operations Programs, BRS, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737; (301) 734-5672. 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: 7 CFR Part 340; Introduction of Organisms and Products Altered or Produced Through Genetic Engineering. *OMB Number:* 0579-0085.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest into the United States.

Under that authority, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service has established 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." The regulations govern the introduction (importation, interstate movement, or release into the environment) of covered genetically engineered organisms and products ("regulated articles.") A permit must be obtained or a notification

acknowledged before a regulated article may be introduced.

The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article and necessitate certain information and recordkeeping requirements, including APHIS-issued permits, applicants' field testing records, and the submission of protocols to ensure compliance.

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 0.945142857 hours per response.

Respondents: U.S. importers and shippers of genetically engineered organisms and products and agricultural companies that produce or test genetically engineered organisms or products or that engage in product research and development.

Estimated annual number of respondents: 121.

Estimated annual number of responses per respondent: 28.925619834.

Estimated annual number of responses: 3,500.

Estimated total annual burden on respondents: 3,308 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 1st day of September 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9-21600 Filed 9-4-09; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0062]

Notice of Request for Extension of Approval of an Information Collection; Importation of Mangoes From India

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 mangoes from India.

DATES: We will consider all comments that we receive on or before November 9, 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-2009-0062> 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-2009-0062, 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-2009-0062.

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 mangoes from India, contact Ms. Donna L. West, Senior Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737; (301) 734-0627. 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 Mangoes from India.

OMB Number: 0579-0312.

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, mangoes from India 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 additional declaration statements, preclearance workplan, trust fund agreement, compliance agreement, monitoring and certification of treatments, and recordkeeping.

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 0.52554 hours per response.

Respondents: Importers and the national plant protection organization of India.

Estimated annual number of respondents: 154.

Estimated annual number of responses per respondent: 33.1753.

Estimated annual number of responses: 5,109.

Estimated total annual burden on respondents: 2,685 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 1st day of September 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9-21603 Filed 9-4-09; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection; Correction

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: The Rural Business-Cooperative Service published a document in the **Federal Register** of July 22, 2009, concerning the collection of information.

DATES: Comments on this notice must be received by November 9, 2009, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information regarding this correction should be directed to Cheryl Thompson, 202-692-0043.

SUPPLEMENTARY INFORMATION:**Need for Correction**

In the **Federal Register** of July 22, 2009, in FR Doc. E9-17345, on page 36163, in the first column, the date for receipt for comments was incorrectly identified as July 22, 2009. The comment period should have been 60 days from date of publication in the **Federal Register**. This correction will allow for a 60-day comment period.

Dated: September 1, 2009.

Judith A. Canalas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9-21590 Filed 9-4-09; 8:45 am]

BILLING CODE 3410-XY-P

DEPARTMENT OF AGRICULTURE**Forest Service****Plantation Fuel Reduction, Eldorado National Forest, Eldorado County, CA**

AGENCY: Forest Service, USDA.

ACTION: Withdrawal of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service, Eldorado National Forest will not prepare an Environmental Impact Statement (EIS) for a proposal to treat approximately 4,637 acres of selected plantations on the Georgetown and Pacific Ranger Districts with a combination of mechanical precommercial thinning and control of competitive vegetation using mechanical and chemical treatments.

The Notice of intent for this project was published in **Federal Register** Vol. 71, No. 195, October 10, 2006/Notices pages 59428-59429.

FOR FURTHER INFORMATION CONTACT:

Dana Walsh, Georgetown Ranger District, 7600 Wentworth Springs Rd., Georgetown, CA 95634, or by telephone at 530-333-4312.

Ramiro Villalvazo,

Forest Supervisor.

[FR Doc. E9-21420 Filed 9-4-09; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS**Agenda and Notice of Public Meeting of the Vermont Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that a planning meeting of the Vermont Advisory Committee will convene at 11 a.m. on Friday, September 18, 2009, at the Community College of Vermont, 145 Billings Farm Road, White River Junction, Vermont. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 19, 2009. The address is the Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to email their comments, or who desire additional information should contact Alfreda Greene, Secretary, at 202-376-7533 or by e-mail to: ero@usccr.gov.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 2, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9-21519 Filed 9-4-09; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS**Agenda and Notice of Public Meeting of the Virginia Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a planning meeting of the Virginia Advisory Committee will convene on Wednesday, September 16,

2009, from 11 a.m. to 12 p.m. The purpose of the meeting is to conduct an orientation meeting and a planning meeting on future activities.

The meeting will be conducted by conference call and is available to the public through the following call-in number: (800) 399-0013, access code: 27700387. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and the access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Alfreda Greene, Secretary of the Eastern Regional Office, office number (202) 376-7533, TTY (202) 376-8116, by 4 p.m., Monday, September 14, 2009.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Friday, October 16, 2009. The address is Eastern Regional Office, 624 9th St., NW., Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact Alfreda Greene, Secretary, at 202-376-7533 or by e-mail to: ero@usccr.gov.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of the advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, September 3, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9-21687 Filed 9-4-09; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Proposed Information Collection; Comment Request; NIST Construction Grant Program Application Requirements**

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 9, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Barbara Lambis, 301-975-4447, Barbara.lambis@nist.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

The NIST Construction Grant Program (Program) is a competitive financial assistance (grant) program for research science buildings through the construction of new buildings or expansion of existing buildings. For purposes of this program, "research science building" means a building or facility whose purpose is to conduct scientific research, including laboratories, test facilities, measurement facilities, research computing facilities, and observatories. In addition, "expansion of existing buildings" means that space to conduct scientific research is being expanded from what is currently available for the supported research activities.

This request is for the information collection requirements associated with requesting updated information from the unfunded meritorious 2008 applicants. The information will be used to make final selections of funding recipients.

II. Method of Collection

Letters of Intent are submitted by paper and full proposals are submitted by paper or electronically via <http://grants.gov>.

III. Data

OMB Control Number: 0693-0055.
Form Number(s): NIST-1101, NIST-1101A, and NIST-1101B.

Type of Review: Regular submission.
Affected Public: U.S. institutions of higher education and non-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Response: 500.

Estimated Total Annual Burden Hours: 250,000.

Estimated Total Annual Cost to Public: None.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 2, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-21495 Filed 9-4-09; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China (PRC). The period of review (POR) is August 1, 2007 through July 31, 2008. We have preliminarily determined an antidumping duty margin for Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (Foshan Shunde) based upon the application of facts available with adverse inference (AFA). We invite interested parties to comment on these preliminary results. We intend to issue final results no later than 120 days from the publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930 as amended (the Act).

DATES: *Effective Date:* September 8, 2009.

FOR FURTHER INFORMATION CONTACT:

Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-4475 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On August 6, 2004, the Department published in the **Federal Register** the antidumping duty order regarding floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004) (*Amended Final and Order*).

On August 1, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on ironing tables from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 44966 (August 1, 2008). On August 29, 2008, Home Products International, Inc. (the Petitioner in this proceeding), requested, in accordance with 19 CFR 351.213(b)(2), an administrative review of this order for Foshan Shunde and Since Hardware (Guangzhou) Co., Ltd. (Since Hardware). On that same date, Foshan Shunde requested a review of its sales. Since Hardware's request for an

administrative review of its sales followed on September 2, 2008. Because the deadline for filing a request for review, August 31, 2008, fell on a weekend Since Hardware's request was timely filed on the first business day thereafter. Since Hardware also requested that the Department defer initiation of the administrative review for one year, pursuant to 19 CFR 351.213(c).

On September 30, 2008, the Department initiated an administrative review of Foshan Shunde and Since Hardware. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56794 (September 30, 2008). On October 29, 2008, the Department published its notice of deferral of the administrative review for one year with respect to Since Hardware, pursuant to 19 CFR 351.213(c) (this notice of deferral was inadvertently omitted from our September 30th notice of initiation). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 73 FR 64305 (October 29, 2008).

On May 1, 2009, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until August 31, 2009.¹ See *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Administrative Review*, 74 FR 20280 (May 1, 2009) (*Extension of Preliminary Results*).

On August 3, 2009, we invited interested parties to comment on the Department's surrogate country selection and to submit publicly available information to value the factors of production. Petitioners submitted comments concerning surrogate values and factors of production in their August 13, 2009 submission. On February 26, 2009, Foshan Shunde submitted public comments concerning surrogate values and factors of production; Petitioner did not comment directly on the use of India as a surrogate country.

The Department issued its original antidumping questionnaire to Foshan Shunde on October 14, 2008. Foshan Shunde timely filed its response to Section A of the questionnaire on

November 18, 2008. Foshan Shunde's Sections C and D responses followed on December 4, 2008. Petitioner filed comments on Foshan Shunde's section A response on November 24, 2008, and on the sections C and D responses on December 15, 2008.

The Department subsequently issued supplemental requests for information on February 10, 2009, April 16, 2009, May 29, 2009, and July 27, 2009. Foshan Shunde timely responded to each of these supplemental requests for information on March 18, 2009, May 1, 2009, June 22, 2009, and August 10, 2009, respectively. Petitioner commented after each Foshan Shunde response thereafter, on March 30, 2009, May 7, 2009, June 30, 2009 and August 13, 2009. On August 27, 2009, Foshan Shunde submitted rebuttal comments to Petitioner's August 13, 2009 letter. Because Foshan Shunde submitted its August 27, 2009 comments four days prior to the fully extended deadline for the Department issuing its preliminary results, we have not considered Foshan Shunde's August 27, 2009 comments in these preliminary results.

Scope of the Order

For purposes of this order, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this review.

Furthermore, this order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this order, the term "unassembled" ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term "complete" ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, e.g., iron rest or linen rack. The term "incomplete"

ironing table means product shipped or sold as a "bare board"—i.e., a metal-top table only, without the pad and cover—with or without additional features, e.g., iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this order under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The order covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for Customs and Border Protection (CBP) purposes, the Department's written description of the scope remains dispositive.

Non-Market-Economy Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is a Non-Market Economy (NME) shall remain in effect until revoked by the administering authority. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME. See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500, 7500–01 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). None of the parties to these reviews has contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

¹ Our Extension of Preliminary Results erroneously gives the extended deadline as September 1, 2009. See *Extension of Preliminary Results at 20280*. However, the correct deadline is August 31, 2009.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. See *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 at Comment 1 (May 6, 1991) (Sparklers), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994). It is the Department's practice to require a party to submit evidence that it operates independently of the State-controlled entity in each segment of a proceeding in which it requests separate rate status. The process requires exporters to submit a separate-rate status application. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Final Results of the 2005–2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007); and *Peer Bearing Co., Changshan v. United States*, 587 F.Supp. 2d 1319, 1324–45 (Ct. Int'l Trade 2008) (affirming the Department's separate rates determination in that underlying review).

As explained below, in this review we have determined that Foshan Shunde failed to provide reliable and verifiable responses to the Department's requests for information (see "Use of Adverse Facts Available", below). Accordingly, because the Department determines that Foshan Shunde's responses are unreliable and inconsistent, the Department finds that Foshan Shunde has not demonstrated that it operates free from government control. Thus, for purposes of this review, the Department determines that Foshan Shunde is part of the PRC-wide entity. See Memorandum to John M. Andersen, Acting Assistant Secretary of Import Administration, "Floor-standing, Metal-top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Use of Facts Available for Foshan Shunde Yongjian Hardware & Housewares Co., Ltd.," dated August 31, 2009 (Facts Available Memorandum); see also, *Carbazole Violet Pigment 23 From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 883

(January 9, 2009) (where the Department revoked a respondent's separate rate status after the respondent refused to cooperate with the Department's administrative review).

Use of Adverse Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the Act), provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines a response to a request for information does not comply with the request, section 782(d) of the Act requires the Department to inform the person submitting the response of the nature of the deficiency and, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority * * * in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See also *Statement of Administrative Action* (SAA) accompanying the Uruguay

Round Agreement Act, H.R. Rep. No. 103–316 at 870 (1994).

Finally, section 776(c) of the Act provides that when the Department relies upon secondary information rather than upon information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See *id.* Corroborate means the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the relevance and reliability of that information.

In this case, the Department finds that Foshan Shunde has provided inaccurate and unreliable information concerning its production costs and factors of production including its steel inputs and the long products utilized in the manufacturing process. Additionally, there is evidence that Foshan Shunde has failed to completely recount the role that an affiliated company played in selling the subject merchandise. For a complete discussion of the deficiencies in Foshan Shunde's questionnaire responses, see the Facts Available Memorandum at pages 1–7. Further, the deficiencies in Foshan Shunde's responses give rise to concerns about the reliability of Foshan Shunde's entire response, including Foshan Shunde's claim of eligibility for separate rate status.

Additionally, we find that, in failing to provide reliable information in response to the Department's five requests for information (see "Background" above for the dates of these questionnaires) concerning its factors of production, Foshan Shunde has significantly impeded this proceeding within the meaning of section 776(a)(2)(A) and (C) of the Act. Because Foshan Shunde provided unusable and inaccurate information in response to the Department's requests for information, and because the requested information is essential to the Department's analysis, the Department can no longer rely on this information for purposes of determining Foshan Shunde's margin of dumping in this administrative review. Therefore, in issuing these preliminary results of review we are required to resort to the

use of the facts otherwise available for the PRC entity, which includes Foshan Shunde.

Finally, we preliminarily determine that Foshan Shunde has failed to cooperate by not acting to the best of its ability to comply with our request for information. For a complete discussion of the deficiencies in Foshan Shunde's questionnaire response, necessitating reference to Foshan Shunde's business proprietary information, see the Facts Available Memorandum. A public version of this proprietary memorandum is available in the Department's Central Records Unit located in the Main Commerce Building.

For the reasons summarized above and fully discussed in the Facts Available Memorandum, we have determined the data submitted by Foshan Shunde concerning its factors of production are unreliable and inaccurate. Moreover, our analysis of these data indicate these deficiencies and irregularities taken together establish a pattern of behavior that undermines the reliability and credibility of Foshan Shunde's entire questionnaire response, including Foshan Shunde's claim for separate rate status. Furthermore, despite the Department's attempts to permit Foshan Shunde to remedy and clarify the deficiencies previously discussed, Foshan Shunde failed to do so. Therefore, the Department finds Foshan Shunde has failed to cooperate to the best of its ability with respect to its obligation to provide accurate information concerning its factors of production. See Facts Available Memorandum. As Foshan Shunde failed to demonstrate its eligibility for separate rate status, we are treating Foshan Shunde as part of the PRC-wide entity. Accordingly, we are preliminarily assigning the PRC-wide entity a margin based upon adverse inferences. As AFA, we preliminarily assign the PRC-wide entity a margin of 157.68 percent, the highest rate calculated in the original less-than-fair-value investigation. See *Amended Final and Order*.

Corroboration of Secondary Information

As noted above, section 776(c) of the Act requires the Department to corroborate secondary information "from independent sources that are reasonably at its disposal." Independent sources used to corroborate such secondary evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties in the course of a particular segment. See *Notice of Preliminary*

Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators From Japan, 68 FR 35627 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators From Japan*, (68 FR 62560 (November 5, 2003)). However, unlike other types of information, there are no independent sources for calculated dumping margins. The only source for an antidumping duty margin is the investigation or prior administrative reviews of an antidumping duty order.

The AFA rate that the Department is now using was determined in a previously published antidumping determination. See *Amended Final and Order*. In that amended final determination, the Department calculated a company-specific rate applicable to Shunde Yongjian Housewares Co., Ltd. Because this rate is a company-specific calculated rate concerning subject merchandise, we have determined this rate to be reliable. *Id.*

As to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. See *D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (ruling that the Department will not use a margin that has been judicially invalidated).

The Federal Circuit has stated that Congress "intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance." See *F. Lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1034 (Fed. Cir. 2000). In applying this precedent, neither the Federal Circuit nor the Court of International Trade has required the Department to follow a formulaic

approach. Section 776(c) of the Act requires that the Department corroborate secondary information used in calculating a margin "to the extent practicable." Thus, the aspirational goal articulated by the Federal Circuit of what Congress intended must be balanced against the practicalities of the case and the evidence on the administrative record.

In this case, the Department rejected all of Foshun Shunde's data and instead is applying AFA for the entire record. As a result, there is no reliable information on this record for which to calculate a margin for Foshun Shunde. Because of the facts of this particular case, the Department will rely on its general practice, and apply the highest calculated rate from any segment of the proceeding. The Department determines that there is no other calculated margin in the history of this antidumping duty order that would ensure that Foshun Shunde will not benefit from failing to cooperate in this administrative review.

In reviews in which the respondent does not cooperate, the Department relies upon the "common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer knowing of the rule, would have produced current information showing the margin to be less." See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190-91 (Fed. Cir. 1990). Because of the Department's well known practice, respondents will cooperate fully and provide the Department with information if they expect to receive a rate lower than the highest previously calculated rate for any entity, or not cooperate if they anticipate receiving a margin higher than the highest previously calculated rate for any entity. Accordingly, the Department determines that the 157.68 percent margin is corroborated, to the extent practicable, in accordance with section 776(c) of the Act.

The PRC-Wide Entity

As explained above, the PRC-wide entity, which includes Foshan Shunde, withheld necessary information by failing to supply full, accurate and reliable responses to the Department's numerous requests for information. Therefore, we preliminarily determine it is appropriate to apply a dumping margin for the PRC-wide entity using facts available on the record. See section 776(a) of the Act. In addition, because the PRC-wide entity failed to cooperate to the best of its ability, we find an adverse inference is warranted. See section 776(b) of the Act.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margin exists:

Exporter	Margin (percent)
The PRC-Wide Entity (including Foshan Shunde Yongjian Housewares & Hardware Co., Ltd.)	157.68

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculate importer-specific *ad valorem* assessment rates for ironing tables from the PRC based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. Where assessments are based upon total facts available, including total AFA, we instruct CBP to assess duties at the *ad valorem* margin rate published above. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a

separate rate, the cash deposit rate will be the PRC-wide rate of 157.68 percent (*see Ironing Tables Order*); and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(1)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed in accordance with 19 CFR 351.309(d).

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing will be held 37 days after the publication of this notice, or the first workday thereafter unless the Department alters the date pursuant to 19 CFR 351.310(d). Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief in accordance with 19 CFR 351.310(c). Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time.

The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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.

These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-21426 Filed 9-4-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[Order No. 1643]

Approval for Expanded Manufacturing Authority; Foreign-Trade Subzone 15E; Kawasaki Motors Manufacturing Corp., U.S.A., Inc. (Internal Combustion Engines); Maryville, MO

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

Whereas, Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, has requested an expansion of the scope of manufacturing authority on behalf of Kawasaki Motors Manufacturing Corp., U.S.A., Inc. (KMMC), operator of Subzone 15E at the KMMC engine manufacturing plant in Maryville, Missouri (FTZ Docket 59-2008, filed 10-14-08);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 62950, 10-22-08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

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

Now, therefore, the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 15E, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of August 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9-21622 Filed 9-4-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1642]

Designation of New Grantee; Foreign-Trade Zone 219, Yuma, AZ; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The Foreign-Trade Zones (FTZ) Board (the Board) has considered the application (filed 06/23/2009) submitted by the Yuma County Airport Authority, grantee of FTZ 219, Yuma, Arizona, requesting reissuance of the grant of authority for said zone to the Greater Yuma Economic Development Corporation, a non-profit organization, which has accepted such reissuance subject to approval by the FTZ Board. Upon review, the Board finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest.

Therefore, the Board approves the application and recognizes the Greater Yuma Economic Development Corporation as the new grantee of Foreign Trade Zone 219, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of August 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9-21621 Filed 9-4-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0908181241-91250-01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by October 8, 2009.

ADDRESSES: Comments may be sent by e-mail to publiccomments@bis.doc.gov or on paper to Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include the phrase "FPBEC Comment" in the subject line of the e-mail message or on the envelope if submitting comments on paper.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, *Telephone:* (202) 482-4252. Copies of the current Annual Foreign Policy Report to the Congress are available at <http://www.bis.doc.gov/news/2009/2009-fpr.pdf> and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

SUPPLEMENTARY INFORMATION: Foreign policy-based controls in the Export Administration Regulations (EAR) are implemented pursuant to Section 6 of the Export Administration Act of 1979, as amended. The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR, including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Other Special Controls). These controls apply to a range of countries, items, activities and persons, including: entities acting contrary to the national security or foreign policy interests of the United States (§ 744.11); certain general purpose microprocessors for 'military

end-users' and 'military end-users' (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms and related items based on the Organization of American States Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Munitions included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability items (§ 742.6); equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); restrictions to exports on certain persons designated as weapons of mass destruction proliferators (§ 744.8); communication intercepting devices (software and technology) (§ 742.13); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.4, 746.7, and 746.9); certain entities in Russia (§ 744.10); individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14); certain persons designated by Executive Order 13315 ("Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members") (§ 744.18); and certain sanctioned entities (§ 744.20). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order

13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 13, 2009 (74 FR 41,325 (August 14, 2009)), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)). The Department of Commerce, insofar as appropriate, is following the provisions of Section 6 by reviewing its foreign policy-based export controls, requesting public comments on such controls, and preparing a report to be submitted to Congress. In January 2009, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect. BIS is now soliciting public comment on the effects of extending or modifying the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;
2. Whether the foreign policy objective of such controls can be achieved through negotiations or other alternative means;
3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;
4. Whether the reaction of other countries to the extension of such controls is not likely to render the controls ineffective in achieving the intended foreign policy objective or be counterproductive to United States foreign policy interests;
5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and
6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in receiving comments on the economic impact of proliferation controls. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of

U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do U.S. trade partners have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners that are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre- and post-shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on trade or acquisitions by intended targets of the controls.

7. Data or other information on the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All comments must be in writing (either e-mail or on paper). All comments will be a matter of public record and will be available for public inspection and copying.

These comments will be displayed on BIS's Freedom of Information Act (FOIA) Web site at www.bis.doc.gov/foia.

Dated: September 2, 2009.

Matthew S. Borman,
Acting Assistant Secretary for Export Administration.

[FR Doc. E9–21591 Filed 9–4–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1644]

Grant of Authority for Subzone Status; Cellusuede Products, Inc. (Flock Fiber), Rockford, IL

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

Whereas, the Foreign-Trade Zones Act provides for “* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Greater Rockford Airport Authority, grantee of Foreign-Trade Zone 176, has made application to the Board for authority to establish a special-purpose subzone at the flock fiber manufacturing and distribution facility of Cellusuede Products, Inc., located in Rockford, Illinois, (FTZ Docket 48–2008, filed 9–3–2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 52816–52817, 9–11–08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restriction listed below;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of flock fiber at the facility of Cellusuede Products, Inc., located in Rockford, Illinois (Subzone 1'76F), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following restriction:

Privileged foreign status (19 CFR 146.41) shall be elected on foreign status nylon,

polyester and polypropylene fibers and tow (HTSUS 5501.10, 5501.20, 5501.40, 5503.20, 5503.40).

Signed at Washington, DC, this 27th day of August 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,
Executive Secretary.

[FR Doc. E9-21616 Filed 9-4-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ10

Incidental Takes of Marine Mammals During Specified Activities; Blasting and Dredging Operations by the U.S. Army Corps of Engineers and U.S. Marine Corps in the U.S. Marine Corps Slipway at the Blount Island Facility, Duval County, FL

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Army Corps of Engineers (ACOE) and U.S. Marine Corps (USMC) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to blasting and dredging operations in the USMC slipway at the Blount Island facility (MCSF-BI Slipway) in Duval County, FL. NMFS has reviewed the application, including all supporting documents, and determined that it is adequate and complete. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to ACOE and USMC to incidentally harass, by Level B harassment only, marine mammals during the specified activities within the specified geographic region.

DATES: Comments and information must be received no later than October 8, 2009.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-

West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing email comments is *PR1.0648-XQ10@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301-713-2289, ext. 172.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 (a)(5)(D)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals for periods not more than one year by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization to take small numbers of marine mammals by harassment shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact. NMFS has defined "negligible impact" in 50 CFR 216.103

as " * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a publication in the **Federal Register** and other relevant media proposed authorizations for the incidental harassment of marine mammals. The publication of the proposed authorization initiates a 30-day public comment period. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 16, 2009, NMFS received a letter from the ACOE and USMC, requesting an IHA. The requested IHA would authorize the take, by Level B (behavioral) harassment, of small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to blasting and dredging operations in the MCSF-BI Slipway. Proposed activities will include the removal of concrete sill/cemented rock by blasting and advanced maintenance dredging. The ACOE proposed to use blasting to fracture ("pre-treat") an existing concrete sill and cemented rock in the slipway, then completely remove the pre-treated sill and cemented rock by dredging, and dredge the entire slipway from its current depth of -37 ft mean low low water (MLLW) to -47 ft MLLW. The dredging will likely be completed using a mechanical dredge (i.e., clamshell or backhoe), cutterhead dredge, and blasting. The dredging will remove approximately 750,000 cubic yards of material from the slipway. Material removed from the dredging will be placed in Dayson Island Dredge Material Management Area located at Little Marsh Island. Concrete from the sill will be removed to an offsite

location. The blasting is proposed to take place during winter 2009–2010 (between November and March) in Duval County, Florida. Additional information on the blasting and dredging project is contained in the application, which is available upon request (see **ADDRESSES**).

Description of the Proposed Specified Activities

The purpose of the blasting and dredging project is to remove a 430 foot (ft) (131 m) long, 32 ft (9.8 m) wide and 14 ft (4.3 m) thick rebar reinforced concrete sill and conduct advance maintenance dredging to a maximum depth of -47 ft (14.3 m) MLLW in the MCSF-BI Slipway. These areas require blasting because they are too dense to dredge. To achieve the removal of the concrete sill and rock in the MCSF-BI Slipway, pre-treatment will be required. The ACOE has used two criteria to determine which areas are most likely to need blasting for the MCSF-BI Slipway: (1) areas documented by core borings to contain hard massive rock; and (2) concrete sill that is too hard to dredge without pre-treatment. Based on evaluations of the core boring logs, and as-built information for the sill provided by the MCSF-BI, the following is an evaluation of the proposed blasting requirements for the current project. Areas currently identified as having the hardest rock and most likely in need of blasting prior to dredging include the concrete sill and the mouth of the slipway. Additional core borings were collected in October, 2008. The results of recent core borings have identified an area of 875,000 ft² of cemented rock within the proposed dredging template in addition to the concrete sill. The cemented rock is highly dense and likely in need of blasting prior to dredging. Based on evaluations of the core boring logs, and as-built information for the sill provided by MCSF-BI, the blasting requirements for the current project would include removal of existing sill and 130,000 cubic yards (cy) cemented sedimentary rock. The pre-treatment of the cemented rock would need to occur between Station 22+00 to Station 43+00 of the existing channel baseline. The concrete sill is located approximately at Station 7+00 (see Figure 1 of ACOE's application).

The focus of the proposed blasting work at the MCSF-BI Slipway would be to pre-treat the concrete sill and any hard rock prior to removal by a dredge utilizing confined blasting, meaning the shots would be "confined" in the rock. In confined blasting, each charge is placed in a hole drilled in the rock

approximately 5 to 10 ft (m) deep; depending on how much rock/concrete needs to be broken and the intended project depth. The hole is then capped with an inert material, such as crushed rock. This process is referred to as "stemming the hole." Stemming is the process of filling each borehole with crushed rock after the explosive charge has been placed. Stemming reduces the strength of the outward pressure wave produced by blasts. The ACOE has used this technique previously at the Port of Miami in 2005. NMFS issued an IHA for that operation on April 19, 2005. For the Port of Miami expansion that used blasting as a pre-treatment technique, the stemming material was angular crushed rock. The optimum size of stemming material is material that has an average diameter of approximately 0.05 times the diameter of the blast-hole. Material must be angular to perform properly (Konya, 2003). For the MCSF-BI Slipway project, the geotechnical branch of the Jacksonville District, will prepare project specific specifications. Each borehole would be drilled 5 to 10 ft into the sill or cemented rock depending on substrate density, and holes would be at least 8 ft apart. In the Miami Harbor project, the following requirements were in the specifications regarding stemming material:

1.22.9.20 Stemming

All blastholes shall be stemmed. The Blaster or Blasting Specialist shall determine the thickness of stemming using blasting industry conventional stemming calculations. The minimum stemming shall be 2 ft (0.6 m) thick. Stemming shall be placed in the blast hole in a zone encompassed by competent rock. Measures shall be taken to prevent bridging of explosive materials and stemming within the hole. Stemming shall be clean, angular to sub-angular, hard stone chips without fines having an approximate diameter of 1/2 inch to 3/8 inch. A barrier shall be placed between the stemming and explosive product, if necessary, to prevent the stemming from setting into the explosive product. Anything contradicting the effectiveness of stemming shall not extend through the stemming.

It is expected that the specifications for any construction utilizing the blasting at Blount Island would have similar stemming requirements as those that were used for the Miami Harbor project. The length of stemming material would vary based on the length of the hole drilled, however minimum lengths would be included in the project specific specifications. Studies have

shown that stemmed blasts have up to a 60 to 90 percent decrease in the strength of the pressure wave released, compared to open water blasts of the same charge weight (Nedwell and Thandavamoorthy, 1992; Hempen *et al.*, 2005; Hempen *et al.*, 2007). However, unlike open water blasts, very little documentation exists on the effects that confined blasting can have on marine animals near the blast (Keevin *et al.*, 1999).

The size of each charge would be determined during an on-site test blast program. At this time the ACOE cannot provide detailed charge weights until after the Contractor has been selected and they assess the types of equipment necessary for use, as well as the specific drill pattern. Each charge would be limited to the lowest poundage that can adequately fracture the rock and other material. A close drill pattern could mean more holes with less explosives, while a wider pattern could mean fewer holes with more explosives. The equipment to remove the cracked rock (i.e., cutterhead dredge) could vary based on cutterhead size and horsepower the larger the head and horsepower, the less pre-treatment that is needed for blasting. The explosives would be used to remove thick rebar and concrete.

The test blast program would be conducted immediately before full-scale blasting begins to determine the smallest effective charge size. The same conservation protocols for full-scale blasting would be used for the test blast program. The test blast program begins with a range of small individual charges and progresses up to the maximum charge size necessary to effectively pre-treat the substrate. The final test event simulates the conditions anticipated during full-scale blasts including charge size, overlying water depth, charge configuration, charge separation, initiation methods, and loading conditions. Once the test blast program is completed, a regression analysis would be used to develop a complete blast plan for the entire project. The test blast program is considered part of the action.

Additional details regarding the proposed blasting and dredging project can be found in the ACOE and USMC's IHA application and Draft Environmental Assessment Removal of Concrete Sill and Advance Maintenance Dredging of Marine Corps Slipway, U.S. Marine Corps Support Facility Blount Island, Jacksonville, Duval County, Florida (Draft EA). The Draft EA can also be found online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>

Proposed Dates, Duration, and Location of Specified Activity

The ACOE expects to award the contract for construction in August, 2009; provide the Notice to Proceed to the selected contractor in October 2009, which would result in blasting between November, 2009 and March, 2010, and is expected to take up to two months.

The project is located in a pre-existing military boat basin (latitude 30.3883 N, longitude 81.5137 W) in Jacksonville, Duval County, Florida, at the MCSF-BI located on Blount Island along the St.

Johns River (Figures 2 and 3 of ACOE's application). The project site is 10 nautical miles west of the St. Johns River outlet. Blount Island was created as a byproduct of ACOE's post-World War II dredging operations in the St. Johns River. The Draft EA provides a detailed explanation of project location as well as project implementation.

Description of Marine Mammals and Habitat Affected in the Activity Area

Several cetacean species and a single species of sirenian are known to or could occur in the Duval County study

area and off the Southeast Atlantic coastline (see Table 1 below). Species listed as Endangered under the U.S. Endangered Species Act (ESA), includes the humpback, sei, fin, blue, North Atlantic right, sperm whale, and Florida manatee. The marine mammals that occur in the proposed blasting area belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the manatee). Table 1 below outlines the cetacean species and their habitat in the region of the proposed project area.

TABLE 1—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE ATLANTIC OCEAN OFF THE U.S. SOUTHEAST COAST

Species	Habitat	ESA ¹
Mysticetes		
Nort Atlantic right whale (<i>Eubalena glacialis</i>)	Coastal and shelf	EN
Humpback whale (<i>Megaptera novaeangliae</i>)	Pelagic and banks	EN
Bryde's whale (<i>Balenoptera brydei</i>)	Pelagic and coastal	NL
Minke whale (<i>Balaenoptera acutorostrata</i>)	Shelf, coastal, and pelagic	NL
Blue whale (<i>Balaenoptera musculus</i>)	Pelagic and coastal	EN
Sei whale (<i>Balaenoptera borealis</i>)	Primarily offshore, pelagic	EN
Fin whale (<i>Balaenoptera physalus</i>)	Slope, mostly pelagic	EN
Odontocetes		
Sperm whale (<i>Physeter macrocephalus</i>)	Pelagic, deep seas	EN
Cuvier's beaked whale (<i>Ziphius cavirostris</i>)	Pelagic	NL
Gervais' beaked whale (<i>Mesoplodon europaeus</i>)	Pelagic	NL
True's beaked whale (<i>Mesoplodon mirus</i>)	Pelagic	NL
Blainville's beaked whale (<i>Mesoplodon densirostris</i>)	Pelagic	NL
Dwarf sperm whale (<i>Kogia sima</i>)	Offshore, pelagic	NL
Pygmy sperm whale (<i>Kogia breviceps</i>)	Offshore, pelagic	NL
Killer whale (<i>Orcinus orca</i>)	Widely distributed	NL
Short-finned pilot whale (<i>Globicephala macrorhynchus</i>)	Inshore and offshore	NL

TABLE 1—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE ATLANTIC OCEAN OFF THE U.S. SOUTHEAST COAST—Continued

Species	Habitat	ESA ¹
False killer whale (<i>Pseudorca crassidens</i>)	Pelagic	NL
Mellon-headed whale (<i>Peponocephala electra</i>)	Pelagic	NL
Pygmy killer whale (<i>Fertesa attentuata</i>)	Pelagic	NL
Risso's dolphin (<i>Grampus griseus</i>)	Pelagic, shelf	NL
Bottlenose dolphin (<i>Tursiops truncatus</i>)	Offshore, inshore, coastal, estuaries	NL
Rough toothed dolphin (<i>Steno bredanensis</i>)	Pelagic	NL
Fraser's dolphin (<i>Lagenodelphis hosei</i>)	Pelagic	NL
Striped dolphin (<i>Stenella coeruleoalba</i>)	Pelagic	NL
Pantropical spotted dolphin (<i>Stenella attenuata</i>)	Pelagic	NL
Atlantic spotted dolphin (<i>Stella frontalis</i>)	Coastal to pelagic	NL
Spinner dolphin (<i>Stenella longirostris</i>)	Mostly pelagic	NL
Clymene dolphin (<i>Stenella clymene</i>)	Pelagic	NL
Sirenians		
West Indian (Florida) manatee (<i>Trichechus manatus latirostris</i>)	Coastal, rivers and estuaries	EN

¹ U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed

The two species of marine mammals that are known to commonly occur in close proximity to the blasting area of the St. Johns River and Blount Island are the West Indian (Florida) manatee and Atlantic bottlenose dolphin.

Florida Manatee

The West Indian manatee in Florida and U.S. waters is managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and is listed as Endangered under the Endangered Species Act (ESA). They primarily inhabit coastal and inshore waters. Manatee occurrences are extremely rare during winter months (December, January, and February) in typical years because of the cold water temperatures in the waterway and lack of warm water refuge sites nearby. To minimize potential involvement with manatees from underwater explosions, the

optimal timeframe to utilize explosives is during the winter months of the year. The USFWS considers this timeframe “the manatee construction window” for utilizing explosives.

Atlantic Bottlenose Dolphins

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters, and in U.S. waters occur in multiple complex stocks along the U.S. Atlantic coast. According to the 2008 NOAA stock assessment report of Western North Atlantic Coastal Morphotype Stocks, the coastal morphotype of bottlenose dolphins is continuously distributed along the Atlantic coast south of Long Island, New York around the Florida peninsula and along the Gulf of Mexico coast. On the Atlantic coast, Scott *et al.* (1988) hypothesized a single coastal migratory stock ranging seasonally from as far

north as Long Island, to as far south as central Florida, citing stranding patterns during a high mortality event in 1987 to 1988 and observed density patterns. More recent studies demonstrate that the single coastal migratory stock hypothesis is incorrect, and there is instead a complex mosaic of stocks (NMFS, 2001; McLellan *et al.*, 2003; NMFS, 2008). The coastal morphotype is morphologically and genetically distinct from the larger, more robust morphotype primarily occupying habitats further offshore (Hoelzel *et al.*, 1998; Mead & Potter, 1995). The primary habitat of the coastal morphotype of bottlenose dolphins extends from Florida to New Jersey during summer months and in waters less than 66 ft (20 m) deep, including estuarine and inshore waters (NMFS, 2008).

There are multiple lines of evidence supporting demographic separation

between bottlenose dolphins residing within estuaries along the Atlantic coast. There are relatively few published studies demonstrating that these resident animals are genetically distinct from animals in nearby coastal waters; however a study conducted near Jacksonville, Florida demonstrated significant genetic differences between animals in nearshore coastal waters and estuarine waters (Caldwell, 2001; NMFS, 2008). Long-term, year-round, multi-generational resident communities of dolphins have been recognized in embayments and coastal areas of the Gulf of Mexico (Wells *et al.*, 1987, 1996; Scott *et al.*, 1990; Weller, 1998; Wells, 2003), and it is not surprising to find similar patterns along the Atlantic coast (NMFS, 2008).

Given the observed patterns of residency across multiple estuaries along the Atlantic coast and the evidence of demographically distinct estuarine stocks in the Gulf of Mexico, it is highly likely that there is demographic separation between bottlenose dolphins residing within estuaries and those in nearshore coastal waters. However, the degree of spatial overlap between these populations remains unclear. Photo-identification studies within estuaries demonstrate seasonal immigration and emigration and the presence of transient animals. In addition, the degree of movement of resident estuarine animals into coastal waters on seasonal or shorter times scales is poorly understood. However, in the 2008 stock assessment report analysis, bottlenose dolphins inhabiting primarily estuarine habitats are considered distinct from those inhabiting coastal habitats (NMFS, 2008).

These complex stock segments of coastal bottlenose dolphins are based on a combination of geographical, ecological, and genetic research. However, because the data of structure of stocks is complex, coastal and continental shelf stocks may overlap, the exact structure of these stocks continues to be revised as research is completed. Analytical results of the overall genetic variation and satellite telemetry studies indicate a minimum of two migrating coastal stocks (Northern Migratory and Southern Migratory coastal stocks) as well as evidence for coastal resident stocks of coastal bottlenose dolphins along the U.S. Atlantic coast. The 2008 NOAA stock assessment report identifies seven prospective stocks of coastal morphotype bottlenose dolphins inhabiting nearshore coastal waters along the Atlantic coast.

Abundance estimates for bottlenose dolphins in each stock were calculated using line transect methods and distance analysis (Buckland *et al.*, 2001; NMFS, 2008). For the Central Florida, Northern Florida, Georgia, South Carolina, and Southern North Carolina stocks, the mean of the summer 2002 and 2004 abundance estimates provided the best estimate of abundance. During winter months, these stocks overlap spatially with either the Southern Migratory or Northern Migratory stocks. There is apparent inter-annual variation in the abundance estimates and observed spatial distribution of bottlenose dolphins in this region that may indicate movements of animals in response to environmental variability (NMFS, 2008).

The proposed action would occur inshore and, therefore, has the potential to affect the coastal stocks. From genetic analysis, the bottlenose dolphin population around Duval County, Florida consists of part of the prospective Northern Florida stock. This stock may also include demographically distinct coastal and resident estuarine populations that are defined by seasonal migratory and transient movements throughout large home ranges. The movement along the southern portion of the Atlantic coast is poorly understood and is currently under study. The resident estuarine stocks are likely demographically distinct from coastal stocks. The estimated population for the prospective Northern Florida stock is approximately 2,502 to 3,064 animals. The Atlantic bottlenose dolphin is not listed as Threatened or Endangered under the ESA, and one or more of the coastal migratory stocks may be depleted, therefore all stocks retain the depleted designation and are considered strategic under the MMPA.

Dr. Quinton White of Jacksonville University states dolphins are commonly seen in the vicinity of the Dames Point Bridge west and upriver of Blount Island (White, pers. comm.). The ACOE MCSF-BI Slipway project site is in the Northern Florida management unit for Atlantic bottlenose dolphin coastal morphotypes. Atlantic bottlenose dolphins are known to occur in the project area at or within a few hundred feet of the project several times a week. Dolphins, when present near the project site, usually occur in groups of two or three. Bottlenose dolphin occurrence in the Jacksonville area is year-round, however significant seasonal variation exists.

Dr. Martha Jane Caldwell (2001) completed research on the coastal and inshore bottlenose dolphin populations of the St. Johns River in the vicinity of

Blount Island. Caldwell determined that there are two resident inshore populations of Atlantic bottlenose dolphins in the St. Johns River, the Intracoastal South/St. Johns River population (also referred to as the Southern community) and the Intracoastal North population (also referred to as the Northern community). The Southern community inhabits the waters east (seaward) of the MCSF-BI Slipway facility, based on Caldwell's assessment (see Figure 4 of ACOE and USMC's application). The estimated size of the Southern community is 145 animals and 191 animals in the St. Johns River proper. There was significant overlap between these two groups, and Caldwell classified them as one Community the Southern Community. Using the maximum number of animals between the two groups, the ACOE will adopt a population size of 191 animals in the Southern Community.

Based on photo-identification and behavioral data, Caldwell (2001) identified three behaviorally differentiated bottlenose dolphin communities in the Jacksonville, Florida area. These three distinct communities have been called Northern, Southern, and Coastal. The Northern community has year-round residency and random social affiliations, with a mean group size of five individuals. The Southern community has seasonal residency and non-random social affiliations, with a mean group size of 22 individuals. The Coastal community has no residency and random social affiliations, with a mean group size of 17 individuals. The social structure on a small geographic scale of these three distinct populations varies based on significant genetic differentiation and behavior. Although the three Jacksonville area communities use contiguous habitats, the Northern and Southern communities are primarily inshore, and the Coastal community generally uses the coastal waters of the Jacksonville area from the beach to 1.9 miles (3 km) offshore (Caldwell, 2001). The Southern and Coastal communities have partially overlapping ranges, while the Northern and Southern community's ranges may generally be separated by the St. John's River. Also, the Southern and Coastal communities are behaviorally and genetically differentiated from the Northern community (Caldwell, 2001).

In Florida and other states along the U.S. East Coast, bottlenose dolphin abundance and density is often correlated with water temperature and season. Significantly fewer dolphins were observed during the winter season

when water temperature falls below 16 degrees Celsius (Caldwell, 2001).

NMFS anticipates that no bottlenose dolphins will be injured, seriously injured, or killed during the three proposed blasting events. The specific objective of the ACOE's Mitigation Plan or Protected Species Watch Plan is to ensure that no dolphins (or manatees) and other protected species are in the area and could be impacted by the blast detonations. Because of the circumstances and the proposed mitigation and monitoring requirements discussed herein this document, NMFS believes it highly unlikely that the proposed activities would result in injury (Level A harassment), serious injury, or mortality of bottlenose dolphins, however, they may temporarily avoid the area where the proposed explosive demolition will occur. The ACOE has requested the incidental take of 191 bottlenose dolphin for the duration of the proposed action. The estimated abundance of the prospective Northern Florida stock is approximately 2,502 to 3,064 animals. There is not currently a stock assessment available concerning the status of bottlenose dolphins in the inshore and nearshore waters off of Florida. NMFS has determined that the number of requested incidental takes for the proposed action are small relative to the stock population estimate of Atlantic bottlenose dolphins.

Further information on the biology and local distribution of these species and others in the region can be found in ACOE's application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at <http://www.nmfs.noaa.gov/pr/species/>

Potential Effects of Activities on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include both lethal and non-lethal injury (Level A harassment), as well as Level B harassment. In the absence of monitoring and mitigation, marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called "cavitation."

A second potential possible cause of mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by

lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS' criteria for determining non-lethal injury (Level A harassment) from explosives are the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50 percent probability level for a rupture of the tympanic membrane (TM). These are injuries from which animals would be expected to recover on their own.

NMFS has established dual criteria for what constitutes Level B harassment: (1) An energy based temporary threshold shift (TTS) received sound levels 182 dB re 1 $\mu\text{Pa}^2\text{-s}$ cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS). The Level B harassment zone, therefore, is the distance from the mortality, serious injury, injury (Level A harassment) zone to the radius where neither of these criterion is exceeded.

The primary potential impact to the Atlantic bottlenose dolphins occurring in the Blount Island action area from the proposed detonations is Level B harassment incidental to noise generated by explosives. In the absence of any monitoring or mitigation measures, there is a very small chance that a marine mammal could be injured or killed when exposed to the energy generated from an explosive force on the sea floor. However, NMFS believes the proposed monitoring and mitigation measures will preclude this possibility in the case of this particular activity.

Non-lethal injurious impacts (Level A harassment) are defined in this proposed IHA as TM rupture and the onset of slight lung injury. The threshold for Level A harassment corresponds to a 50 percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 $\mu\text{Pa}^2\text{s}$. TM rupture is well-correlated with permanent hearing impairment (Ketten, 1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold). The farthest distance from the source at which an animal is exposed to the EFD level for the Level A harassment threshold is unknown at this time.

Level B (non-injurious) harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 $\mu\text{Pa}^2\text{s}$ maximum EFD level in any 1/3- octave band above 100 Hz for toothed whales (e.g., dolphins). A second criterion, 23 psi, has recently been established by NMFS to provide a more conservative range of TTS when the explosive or animals approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. The distance for 23 psi has not been determined at this time, however, NMFS will apply the more conservative of these two distances.

Level B harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of times. Threshold criteria for this particular type of harassment are currently still being considered. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1 $\mu\text{Pa}^2\text{s}$. Due, however, to the infrequency of detonations, the relatively short overall time period of the project, and the continuous movement of marine mammals in the St. Johns River, NMFS believes that behavioral modification from repeated exposures to the same animals is unlikely.

The ACOE is unable to determine if Atlantic bottlenose dolphins in the area utilize the MCSF-BI Slipway, however they do transit up and down the St. Johns River, past the slipway, and have been documented at the Dames Point Bridge west of the MCSF-BI Slipway, thus their presence in the waters adjacent to the slipway is expected. The slipway is a man-made, dead-end slip with concrete walls and a rock and sand bottom. The bottom of the river adjacent to the slip is rock and sand. The ACOE acknowledges that while the MCSF-BI Slipway may not be suitable habitat for dolphins in the St. Johns River, it is likely that animals may traverse the St. Johns River to North Biscayne Bay or offshore via the main port channel. North Atlantic right whales are highly unlikely to occur in the MCSF-BI Slipway area, as they would need to enter the river and swim 10 miles up the river to be found adjacent to the slipway.

Possible Effects of Activities on Marine Mammal Habitat

The ACOE expects no loss or modification of habitat for the populations of marine mammals in the St. Johns River located adjacent to the

MCSF-BI Slipway. All of the material dredged from the Blount Island facility has been placed in the Dayton Island DMMA. The bottom of the basin in the MCSF-BI Slipway mostly consists of silts and clays, with some sand. There are no mangroves seagrasses, or corals in the basin.

The ambient noise level of an area like MCSF-BI includes sounds from both natural (wind, waves, birds, etc.) and artificial (vehicle and ship engines, maintenance activities, etc.) sources. The strength/extent (or magnitude) and frequency of sound levels vary over the course of the day, throughout the week, and can be affected by weather conditions.

Noise generated by dredges is low frequency in nature. This low frequency noise tends to carry long distances in water, but is attenuated the further away you are from the source. Currently, periodic maintenance dredging occurs in the dredging project area, as often as every two years for the NAVSTA Mayport entrance channel and turning basin. Deepening of the Jacksonville Harbor has involved some blasting upriver from the Jacksonville Harbor Bar Cut 3 Federal navigation channel. Underwater noise as it relates to marine mammals is discussed in Sections 3.6 and 4.6 of the ACOE's Draft EA. Sound exposure levels measured for equipment similar to clamshell equipment used in the past to dredge the NAVSTA Mayport turning basin range between 75 and 88 dBA at 50 ft (15 m) distance from the dredging equipment (NMFS, 2007). The ACOE and USMC expect the effects on marine mammal habitat to be minimal.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the MCSF-BI Slipway less desirable shortly after each blasting event and during dredging operations. The impacts will be localized and instantaneous. Impacts to marine mammal, invertebrate, and fish species are not expected to be detrimental.

Proposed Mitigation

In order to issue an Incidental Take Authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The ACOE and MSCF-BI plan to remove a sill consisting of 875,000 ft² (81,290 m²) of reinforced concrete and 130,000 cy of hard rock from the MSCF-BI Slipway using the same confined blasting technique as utilized at the Port of Miami project in 2005 and reviewed in Jordan *et al.* (2007) and Hempen *et al.* (2007) (see application). Danger, safety, and monitoring radii would be based on the delay weights of an unconfined charge, however for this project, all charges would be confined in the rock/concrete.

Radii calculations:

Danger Zone radius = 260 (lbs/delay)^{1/3}

Safety Zone radius (two times the size of the Danger Zone) = 520 (lbs/delay)^{1/3}

Watch Zone radius (three times the size of the Danger Zone) = 3 [260 (lbs/delay)^{1/3}]

These zones are considered conservative because they are based on unconfined blasts in open water. Open-water detonations produce both higher amplitude and higher frequency shock waves than contained detonations; thus, stemming charges results in reduced pressures and lower aquatic organism mortality than the same explosive charge weight detonated in open water. These same calculations were approved by NMFS for use during the Miami Harbor Project. A take by Level B harassment could occur if a marine mammal is exposed to blasting outside the Danger Zone and inside the Safety Zone.

In the MCSF-BI Slipway where blasting is required to obtain channel design depth, marine mammal protection measures shall be employed, before, during, and after each blast. The following standard conditions will be incorporated into the project specifications to reduce the risk of impacts to protected species to the lowest level practicable within the project area:

(1) Establishing a Danger, Safety, and Watch Zone for confined blasting based on the maximum weight of explosives detonated. For each explosive charge placed, detonation will not occur if a marine mammal is known to be (or based on previous sightings, may be) within a circular area around the detonation site with the following radius:

$$R = 260(W)^{1/3}$$

Where:

R = radius of the Danger Zone in ft

W = weight of the explosive charge in lbs (tetryl or TNT)

(2) Confining the explosives in the borehole with drill patterns restricted to a minimum of 8 ft (2.4 m) separation from any other loaded borehole;

(3) Restricting the hours of detonation from two hours after sunrise to one hour before sunset to ensure adequate observation of marine mammals in the project area;

(4) Staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time;

(5) Capping or stemming the boreholes containing explosives with angular rock or crushed stone (sized 1/20 to 1/8 of the borehole diameter) to a minimum of 12 inches in depth in order to reduce the outward potential of the blast, thereby reducing the change of injuring a marine mammal;

(6) Matching, the extent possible, the energy needed in the "work effort" of the borehole to the rock mass to minimize excess energy vented into the water column;

(7) A protected species watch (as described in Jordan *et al.*, 2007) will be conducted by no less than six NMFS-qualified observers from a small watercraft, aircraft and/or elevated platform on the explosives barge, beginning at least 60 min before and continuing for at least 30 min after the time of each detonation, in a circular area at least three times the radius of the above described Danger Zone (this is called the Watch Zone), to ensure that there are no marine mammals in the proximity of the action area at the time of detonation;

(8) Any marine mammal(s) in the Danger Zone or the Safety Zone shall not be forced to move out of those zones by human intervention. Detonation shall not occur until the animal(s) move(s) out of the Danger Zone and/or the Safety Zone on its own volition.

(9) In the event a marine mammal is injured, seriously injured, or killed during blasting, the Contractor shall immediately notify the Contracting Officer as well as the following agencies:

a. Florida Marine Patrol "Marine Mammal Stranding Hotline" 1-800-342-5367;

b. NMFS Regional Office at 727-570-5312; and

c. USFWS Vero Beach Office at 772-562-3909; and

(10) Conducting blasts during time periods of the year when there are low marine mammal abundance densities.

In the MCSF-BI Slipway or any area where explosives are required to remove materials, marine mammal protection measures will be employed by the ACOE and USMC. For each explosive charge, the ACOE would ensure that a detonation will not occur if a marine mammal is sighted by a dedicated biologically-trained observer within the

Danger Zone, a circular area around the detonation site.

Although the area inside the Safety Zone is considered to be an area for potential injury, the ACOE, USMC, and NMFS believe that because all explosive charges will be stemmed (placed in drilled hole and tamped with rock), the areas for potential mortality and injury will be significantly smaller than this area and, therefore, it is unlikely that even non-serious injury would occur if as is believed to be the case, monitoring and mitigating this zone will be effective. Since bottlenose dolphins are commonly found on the surface of the water, implementation of a mitigation and monitoring program is expected by NMFS to be effective.

Avoiding periods when marine mammals are in the blasting zone is another mitigation measure to protect marine mammals from underwater explosions.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The ACOE would implement a Protected Species Watch Plan. The Protected Species Watch Plan is based on the required Danger, Safety, and Watch zones and optimal observation locations. Each zone is a concentric circle whose radius is drawn from the center of the blast array. Buoys would demarcate zones where effects are possible. The Protected Species Watch Plan would consist of six observers which include at least one aerial observer, two boat-based observers, and two observers stationed at other locations (likely on the barge used to drill boreholes). The sixth observer would be placed in the most optimal observation location (boat, barge, or aircraft) on a day-by-day basis depending on the location of the blast and the placement of the dredging equipment. Observers would have the authority to halt the event if a protected species is observed inside a restricted area. This process would help to insure complete coverage of the three zones as well as any critical areas. The Protected Species Watch Plan would begin at least

one hour prior to each blast and continue for 30 min after each blast.

All observers would be equipped with marine-band VHF radios, maps of the blast zone, polarized sunglasses, and appropriate data sheets. In addition to the observation gear, all required personal protective equipment (hard hat, steel toed boots, life vest) would be worn by observers at all times with the exception of the aerial observer.

Watch hours would be restricted to between two hours after sunrise and one hour before sunset. The watch would begin at least one hour prior to the scheduled blast and would continue throughout the blast. Watch would then continue for at least 30 minutes post-blast, at which time any animals that were seen prior to the blast are visually re-located whenever possible.

If an animal is spotted inside the Danger Zone or Safety Zone and not re-sighted, no blasting would be authorized until at least 30 minutes has elapsed since the last sighting of that animal.

Proposed monitoring requirements in relation to ACOE and USMC's blasting activities would include observations made by the applicant and their associates. Information recorded would include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors before, during and after blasting activities. Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area to NMFS and USFWS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammal, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish would be reported to NMFS and USFWS.

If at any time injury or death of any marine mammal occurs that may be a result of the proposed blasting activities, the ACOE and USMC would suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury, serious injury, or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Several mitigation measures to reduce the potential for harassment from explosive demolition activities would be (or are proposed to be implemented) implemented as part of the blasting and dredging activities. The potential risk of injury, serious injury, or mortality would be avoided with the following proposed mitigation and monitoring measures. Monitoring of the test area will continue throughout the activity

until the last detonation is complete. The activity would be postponed if:

(1) Any marine mammal is visually detected within the Danger Zone or Safety Zone. The delay would continue until the animal(s) that caused the postponement is confirmed to be outside the Danger Zone (visually observed swimming out of the range and not likely to return).

(2) Any marine mammal is detected in the Danger Zone and subsequently is not seen again. The activity would not continue until the last verified location is outside the Danger Zone and the animal is moving away from the activity area, or the animal has not been seen for at least 30 minutes within the Danger Zone.

(3) Large schools of fish are observed in the water within the Danger Zone or Safety Zone. The delay would continue until large schools are confirmed to be outside the Safety Zone.

In the event of a postponement, pre-activity monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, mitigation measures would continue while operations personnel attempted to recognize and solve the problem, i.e., detonate the charge.

Post-activity monitoring is designed to determine the effectiveness of pre-activity monitoring and mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring, concentrating on the area down current of the test site, would commence immediately following each detonation and continue for at least one hour after the last detonation. The monitoring team would document and report to the appropriate organization the marine mammals killed or injured during the activity and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the team would be documented and reported to the project leader.

West Indian manatees, which are federally listed as Endangered under the ESA and managed by the USFWS, are not expected in the St. John's River during the time periods when the activities would be conducted. However, if manatees are sighted during the activities, the ACOE would follow similar mitigation and monitoring procedures in place for bottlenose dolphins to avoid impacts, suspending activities in any areas manatees are occupying.

The ACOE and USMC plan to coordinate monitoring with the appropriate Federal and state resource agencies, and will provide copies of all

relevant monitoring reports prepared by their contractors. After completion of all detonation and dredging events, the ACOE and USMC would submit a summary report to regulatory agencies. This report would contain the observer's logs, provide the names of the observers, and their positions during the event, the number and location of marine mammals sighted during the monitoring period, the behavior observations of the marine mammals, and the actions that were taken when the animals were observed in the project area.

The ACOE would notify NMFS and the Regional Office prior to initiation of each explosive demolition session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, within 24 hours. A draft final report must be submitted to NMFS within 90 days after the conclusion of the blasting activities. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of detonations as well as pre- and post-blasting monitoring observations. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

Negligible Impact and Small Numbers Analysis and Determination

50 CFR 216.103 states that "negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the ACOE and USMC would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the blasting and dredging activities would have a negligible impact on the affected species or stocks of marine mammals.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There is no subsistence hunting for marine mammals in the waters off of the

coast of Florida that implicates MMPA Section 101(a)(5)(D).

Endangered Species Act (ESA)

For the reasons already described in this **Federal Register** notice, NMFS has determined that the described proposed blasting activities and the accompanying IHA may have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. The ACOE and USMC requested a Section 7 consultation pursuant to the ESA with NMFS' Southeast Regional Office. Since ESA-listed species are not expected to be adversely affected by the proposed activities provided the described protected species avoidance measures for the use of explosives are implemented, a Letter of Concurrence was prepared by the NMFS Southeast Regional Office on July 22, 2009.

National Environmental Policy Act (NEPA)

The ACOE has prepared a "Draft EA Removal of Concrete Sill and Advance Maintenance Dredging of Marine Corps Slipway, U.S. Marine Corps Support Facility Blount Island, Jacksonville, Duval County, Florida," which analyzed the project's purpose and need, alternatives, affected environment, and environmental effects for the proposed action. The EA evaluates whether to remove the concrete sill in the MCSF-BI Slipway and conduct advance maintenance dredging from -37 to -47 ft MLLW, as well as alternatives to accomplish the MCSF-BI Slipway goal. NMFS will review the ACOE and USMC's EA and the public comments received and subsequently either adopt it or conduct a separate NEPA analysis, as necessary, prior to making a determination on the issuance of the IHA. A copy of the Draft EA is available upon request (see **ADDRESSES**).

Preliminary Determinations

Based on ACOE and USMC's application, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described blasting and dredging project will result, at most, in a temporary modification in behavior by small numbers of Atlantic bottlenose dolphin, in the form of temporarily vacating the MCSF-BI Slipway area to avoid blasting and dredging activities and potential for minor visual and acoustic disturbance from dredging and detonations. The effect of the blasting and dredging project is expected to be limited to short-term and localized TTS-related behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the stock population size, potentially taken by harassment is small. In addition, no take by injury, serious injury, or death is anticipated, and take by Level B harassment will be at the lowest level practicable due to incorporation of the proposed monitoring and mitigation measures mentioned previously in this document. NMFS has further preliminarily determined that the anticipated takes will have a negligible impact on the affected species or stock of marine mammals. No injury (Level A harassment), serious injury, and/or mortality is expected or authorized for marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply to this proposed action as there are no subsistence users within the geographic area of the proposed project.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the ACOE for the harassment of small numbers (based on populations of the species and stock) of Atlantic bottlenose dolphin incidental to blasting and dredging operations, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 1, 2009.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. E9-21601 Filed 9-4-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XR46

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 Pacific Fishery Management Council's (Pacific Council) Vessel Monitoring System Committee (VMSC) will hold a working meeting, which is open to the public.

DATES: The VMSC meeting will be held Tuesday, October 6, 2009, from 10 a.m. until business for the day is completed.

ADDRESSES: The VMSC meeting will be held at the Marriot Residence Inn, Portland Airport, Cascade Station, Mount Hood Room, 9301 NE Cascade Parkway, Portland, OR 97220; telephone: (503) 284–1800.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the VMSC meeting is to review performance of the VMS program and develop recommendations that might be implemented through the 2011–12 biennial specifications process. No management actions will be decided by the VMSC. The VMSC's role will be development of recommendations to be provided for consideration by the Pacific Council at its November 2009 Costa Mesa, CA.

Although non-emergency issues not contained in the meeting agenda may come before the VMSC for discussion, those issues may not be the subject of formal VMSC action during this meeting. VMSC 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 VMSC'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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 3, 2009.

William D. Chappell,

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

[FR Doc. E9–21672 Filed 9–4–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648–XR47

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT), Scientific and Statistical Committee (SSC) Salmon Subcommittee, and Model Evaluation Workgroup (MEW) will review proposed salmon methodology and conservation objective changes in a joint work session, which is open to the public.

DATES: The work session will be held Monday, October 5, 2009, from 10 a.m. to 4:30 p.m., and Tuesday October 6, 2009 from 8 a.m. to 4 p.m.

ADDRESSES: The work session will be held at the Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to brief the STT and SSC Salmon Subcommittee on proposed changes to methods and standards used to manage ocean salmon fisheries. The work session will include review of the Klamath River fall Chinook maturity boundary, an assessment of September ocean fishing impacts for Klamath and Sacramento River fall Chinook, an update on methods to forecast ocean abundance of Columbia River fall Chinook, an analysis of bias in Chinook and Coho Fishery Regulation Assessment Models

(FRAM) due to multiple encounters in mark-selective fisheries, and proposed changes to the conservation objectives for Puget Sound coho and possibly Oregon coastal Chinook.

Although non-emergency issues not contained in the meeting agenda may come before the STT, SSC Salmon Subcommittee, and MEW 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 Fishery Conservation and Management Act, provided the public has been notified of the 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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 3, 2009.

William D. Chappell,

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

[FR Doc. E9–21673 Filed 9–4–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE**National Telecommunications and Information Administration****Online Safety and Technology Working Group Meeting**

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Online Safety and Technology Working Group (OSTWG).

DATES: The meeting will be held on September 24, 2009, from 9:00 a.m. to 3:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the United States Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso at (202) 482–0977 or jgattuso@ntia.doc.gov; and/or visit NTIA's Web site at www.ntia.doc.gov.

SUPPLEMENTARY INFORMATION: *Background:* NTIA established the OSTWG pursuant to Section 214 of the

Protecting Children in the 21st Century Act (Act). The OSTWG is composed of representatives of relevant sectors of the business community, public interest groups, and other appropriate groups and Federal agencies. The members were selected for their expertise and experience in online safety issues, as well as their ability to represent the views of the various industry stakeholders.

According to the Act, the OSTWG is tasked with evaluating industry efforts to promote a safe online environment for children. The Act requires the OSTWG to report its findings and recommendations to the Assistant Secretary for Communications and Information and to Congress within one (1) year after its first meeting.

Matters to Be Considered: The OSTWG will hear presentations relevant to online safety and will have discussions focused on consumer education.

Time and Date: The meeting will be held on September 24, 2009, from 9:00 a.m. to 3:00 p.m. Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting may be webcast. Please refer to NTIA's web site, <http://www.ntia.doc.gov>, for the most up-to-date meeting agenda and webcast information.

Place: The meeting will be held at the United States Department of Commerce, 1401 Constitution Avenue, NW, Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. Attendees should bring a photo ID and arrive early to clear security. The public meeting is physically accessible to people with disabilities. Individuals requiring special services, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso at (202) 482-0977 or jgattuso@ntia.doc.gov, at least five (5) business days before the meeting.

Dated: September 2, 2009.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E9-21604 Filed 9-4-04; 8:45 am]

BILLING CODE 3510-60-S

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-818]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) for the period of review (POR) January 1, 2007, through December 31, 2007. For information on the net subsidy for each company reviewed, see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. See the "Public Comment" section of this notice.

DATES: *Effective Date:* September 8, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW., Washington, DC 20230; *telephone:* (202) 482-2209 and (202) 482-3338, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** the CVD order on CORE from Korea. See *Countervailing Duty Orders and Amendments of Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Korea*, 58 FR 43752 (August 17, 1993). On August 1, 2008, the Department published a notice of opportunity to request an administrative review of this CVD order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 73 FR 44966 (August 1, 2008).

On August 29, 2008, we received a timely request for review from petitioners¹ with regard to Pohang Iron and Steel Co., Ltd. (POSCO) and Dongbu Steel Co., Ltd. (Dongbu). On August 29, 2008, we also received a timely request

for review from Hyundai HYSCO Ltd. (HYSCO). On September 30, 2008, the Department published a notice of initiation of the administrative review of the CVD order on CORE from Korea covering the period January 1, 2007, through December 31, 2007. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56794, 56796 (September 30, 2008). On October 2, 2008, the Department issued the initial questionnaire to Dongbu, HYSCO, and POSCO as well as the Government of Korea (GOK). On November 24, 2008, the Department received questionnaire responses from POSCO, POSCO Steel Service & Sales Co., Ltd. (POSTEEL, a trading company for POSCO), Pohang Steel Co., Ltd. (POCOS, a production affiliate of POSCO),² Dongbu, and HYSCO. On November 25, 2008, the Department received the GOK's questionnaire response. On February 25 and February 26, 2009, the Department received supplemental questionnaire responses from the GOK and HYSCO, respectively. On March 27, 2009, the Department received supplemental questionnaire responses from the GOK and POSCO. On April 3, 2009, the Department received a supplemental questionnaire response from the GOK. On April 15, 2009, the Department received a second supplemental questionnaire response from HYSCO. On April 16, 2009, the Department issued a third supplemental questionnaire to HYSCO and received the company's response on April 30, 2009. On May 8, 2009, and May 13, 2009, the Department issued additional supplemental questionnaires to POSCO and the GOK, respectively. On May 22, 2009, and May 27, 2009, the Department received responses from POSCO and the GOK, respectively.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are Dongbu, HYSCO, and POSCO (and its affiliates POCOS and POSTEEL).

Affiliated Companies

In this administrative review, record evidence indicates that POCOS is a majority-owned production affiliate of POSCO. Under 19 CFR 351.525(b)(6)(iii), if the firm that received a subsidy is a holding company, including a parent company with its own operations, the Department

¹ Petitioners are Nucor Corporation and United States Steel Corporation.

² In these preliminary results, unless otherwise stated, we use POSCO to collectively refer to POSCO, POCOS, and POSTEEL.

will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. Thus, we attributed any subsidies received by POCOS to POSCO and its subsidiaries, net of intra-company sales. Dongbu reported that it is the only member of the Dongbu group in Korea that was involved with the production and sale of subject merchandise to the United States. HYSCO reported that it is the only company within the Hyundai Motor Group that produces and sells the subject merchandise.

Scope of Order

Products covered by this order are certain corrosion-resistant carbon steel flat products from Korea. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7210.30.0000, 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.61.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.20.1500, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.30.15.0000, 7217.32.5000, 7217.33.5000, 7217.39.1000, 7217.39.5000, 7217.90.1000 and 7217.90.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Average Useful Life

Under 19 CFR 351.524(d)(2), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (IRS) 1997 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under examination and that the difference between the company-specific and/or country-wide AUL and the AUL from the IRS tables is significant. According to the IRS tables, the AUL of the steel industry is 15 years. No interested party challenged the 15-year AUL derived from the IRS tables. Thus, in this review, we have allocated, where applicable, all of the non-recurring subsidies provided to the producers/exporters of subject merchandise over a 15-year AUL.

Creditworthiness

In their February 9, 2009, submission petitioners allege that Dongbu was uncreditworthy during 2004 through 2007. The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. See 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i), the Department normally examines the following four types of information: (1) The receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position.

As explained in the Department's memorandum dated August 31, 2009, we find that Dongbu obtained comparable loans from commercial lending institutions that coincide with the time period during which petitioners allege Dongbu was uncreditworthy. See Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office 3, titled

"Uncreditworthiness Allegation Regarding Dongbu Steel Co., Ltd." (August 31, 2009) (Creditworthy Memorandum), of which a public version is on file in Room 1117 of the main Commerce building in the Central Records Unit (CRU). Therefore, in accordance with 19 CFR 351.505(a)(4)(i), we preliminarily determine that Dongbu was creditworthy during 2004 through 2007. For further information see the Creditworthy Memorandum.

Subsidies Valuation Information

A. Benchmarks for Short-Term Financing

For those programs requiring the application of a won-denominated, short-term interest rate benchmark, in accordance with 19 CFR 351.505(a)(2)(iv), we used as our benchmark the company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POR. Where no such benchmark instruments are available, we used national average lending rates for the POR, as reported in the International Monetary Fund's (IMF) *International Financial Statistics Yearbook*. This approach is in accordance with 19 CFR 351.505(a)(3)(ii) and the Department's practice. See, e.g., *See Corrosion—Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) (*CORE from Korea 2006*), and accompanying Issues and Decision Memorandum (CORE from Korea 2006 Decision Memorandum) at "Benchmarks for Short-Term Financing."

For document acceptance (D/A) loans rediscounted under the Korean Export Import Bank's (KEXIM's) rediscount program, in accordance with 19 CFR 351.505(a)(2)(ii), we used, for benchmark purposes, usance loans issued by commercial banks to the respondent firms. This approach is in accordance with 19 CFR 351.505(a)(2)(ii) and the Department's practice. See, e.g., *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS Paper Investigation*), and accompanying Issues and Decision Memorandum at "Comment 18" (CFS Paper Decision Memorandum).

B. Benchmark for Long-Term Loans

During the POR, Dongbu, HYSCO, and POSCO had outstanding

countervailable long-term won-denominated and foreign-currency-denominated loans from government-owned banks and Korean commercial banks. We used the following benchmarks to calculate the subsidies attributable to respondents' countervailable long-term loans obtained through 2007:

(1) For countervailable, foreign-currency denominated loans, we used the company-specific weighted-average foreign currency-denominated interest rates on the company's loans from foreign bank branches in Korea, foreign securities, and direct foreign loans outstanding during the POR. Where no such benchmark instruments were available, and consistent with 19 CFR 351.505(a)(3)(ii), as well as our practice, we relied on the national average lending rates as reported by the IMF's *International Financial Statistics Yearbook*. See, e.g., *CORE from Korea 2006* and *CORE from Korea 2006 Decision Memorandum* at "Benchmarks for Long-Term Loans."

(2) For countervailable, won-denominated long-term loans, we used, where available, the company-specific interest rates on the company's comparable commercial, won-denominated loans. If such loans were not available, we used, where available, the company-specific corporate bond rate on the company's public and private bonds, as we determined that the GOK did not control the Korean domestic bond market after 1991. See, e.g., *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) (*Stainless Steel Investigation*) and "Analysis Memorandum on the Korean Domestic Bond Market" (March 9, 1999). The use of a corporate bond rate as a long-term benchmark interest rate is consistent with the approach the Department has taken in several prior Korean CVD proceedings. See *Id.*; see also *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea (H Beams Investigation)*, 65 FR 41051 (July 3, 2000), and accompanying Issues and Decision Memorandum at "Benchmark Interest Rates and Discount Rates;" and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMs Investigation*), and accompanying Issues and Decision Memorandum at "Discount Rates and Benchmark for Loans." Specifically, in those cases, we determined that, absent company-specific, commercial long-term loan interest rates, the won-

denominated corporate bond rate is the best indicator of the commercial long-term borrowing rates for won-denominated loans in Korea. Where company-specific rates were not available, we used the national average of the yields on three-year, won-denominated corporate bonds, as reported by the Bank of Korea (BOK). This approach is consistent with 19 CFR 351.505(a)(3)(ii) and our practice. See, e.g., *CORE from Korea 2006 Decision Memorandum* at "Benchmark for Long Term Loans."

In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued. For countervailable variable-rate loans outstanding during the POR, pursuant to 19 CFR 351.505(a)(5)(i), we used the interest rates of variable-rate lending instruments issued during the year in which the government loans were issued. Where such benchmark instruments were unavailable, we used interest rates from debt instruments issued during the POR as such rates also reflect a variable interest rate that would be in effect during the POR. See 19 CFR 351.505(a)(5)(ii).

I. Programs Determined To Be Countervailable

A. Asset Revaluation Under Article 56(2) of the Tax Reduction and Exemption Control Act (TERCL)

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. The Department has previously found this program to be countervailable. For example, in the *CTL Plate Investigation*, the Department determined that this program was *de facto* specific under section 771(5A)(D)(iii) of the Tariff Act of 1930, as amended (the Act), because the actual recipients of the subsidy were limited in number and the basic metal industry was a dominant user of this program. See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176, 73183 (December 29, 1999) (*CTL Plate Investigation*). We also determined that a financial contribution was provided in the form of tax revenue foregone

pursuant to section 771(5)(D)(ii) of the Act. *Id.* The Department further determined that a benefit was conferred within the meaning of section 771(5)(E) of the Act on those companies that were able to revalue their assets under TERCL Article 56(2) because the revaluation resulted in participants paying fewer taxes than they would otherwise pay absent the program. *Id.* No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of the countervailability of this program.

The benefit from this program is the difference that the revaluation of depreciable assets has on a company's tax liability each year. Evidence on the record indicates that, in 1989, POSCO made an asset revaluation that increased its depreciation expense. To calculate the benefit to POSCO, we took the additional depreciation listed in the tax return filed during the POR, which resulted from the company's asset revaluation, and multiplied that amount by the tax rate applicable to that tax return. We then divided the resulting benefit by POSCO's total free on board (f.o.b.) sales. See 19 CFR 351.525(b)(3). On this basis, we preliminarily determine the net countervailable subsidy to be 0.02 percent *ad valorem* for POSCO. Dongbu and HYSCO did not use this program during the POR.

B. Research and Development Grants Under the Industrial Development Act (IDA)

The GOK, through the Ministry of Knowledge Economy (MKE),³ provides research and development (R&D) grants to support numerous projects pursuant to the IDA, including technology for core materials, components, engineering systems, and resource technology. The IDA is designed to foster the development of efficient technology for industrial development. To participate in this program a company may: (1) Perform its own R&D project, (2) participate through the Korea Association of New Iron and Steel Technology (KANIST),⁴ which is an association of steel companies established for the development of new iron and steel technology, and/or (3) participate in another company's R&D project and share R&D costs as well as funds received from the GOK. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan and must perform R&D as set forth

³ MKE was formerly known as the Ministry of Commerce, Industry, and Energy (MOCIE).

⁴ Also known as Korea New Iron & Steel Technology Research Association (KNISTRA).

under the Notice of Industrial Basic Technology Development Plan. If the R&D project is not successful, the company must repay the full amount of the grants provided by the GOK.

In the *H Beams Investigation*, the Department determined that through KANIST, the Korean steel industry receives funding specific to the steel industry. Therefore, given the nature of KANIST, the Department found projects under KANIST to be specific. See *Preliminary Negative Countervailing Duty Determination with Final Antidumping Duty Determination: Structural Steel Beams From the Republic of Korea*, 64 FR 69731, 69740 (December 14, 1999) (unchanged in the final results, 65 FR 69371 (July 3, 2000), and accompanying Issues and Decision Memorandum at “R&D Grants Under the Korea New Iron & Steel Technology Research Association (KNISTRA)”). Further, we found that the grants constitute a financial contribution under section 771(5)(D)(i) of the Act in the form of a grant, and bestow a benefit under section 771(5)(E) of the Act in the amount of the grant. *Id.* No new factual information or evidence of changed circumstances has been provided to the Department with respect to this program. Therefore, we preliminarily continue to find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act and constitutes a financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

HYSCO and POSCO were the only responding companies that benefitted from this program during the POR. Both HYSCO and POSCO participated in projects indirectly through KANIST. POSCO also participated indirectly through the Korea Construction Equipment Research Association (KCERA). Both companies claim that projects for which grants were received from the government were not related to subject merchandise.

Upon review of the information submitted by HYSCO, we preliminarily determine that certain grants pertain specifically to production of a product that is not subject merchandise. See Memorandum to the File titled “HYSCO’s R&D Grants Under the IDA” (August 31, 2009) (HYSCO Grants Memorandum), of which a public version is on file in the CRU. In addition, based on our review of the information submitted by POSCO, we preliminarily determine that certain grants pertain to non-subject merchandise that involves a production process that is downstream from the production process for subject

merchandise. See Memorandum to the File titled “POSCO’s R&D Grants Under the IDA” (August 31, 2009) (POSCO Grants Memorandum), of which a public version is on file in the CRU. Therefore, consistent with 19 CFR 351.525(b)(5)(i) and our past practice, we preliminarily determine that these grants are tied to non-subject merchandise. Hence, we did not include these grants in our benefit calculations.

HYSCO and POSCO, however, did report receiving certain grants related to new technologies that are applicable to both inputs of subject merchandise as well as subject merchandise. See HYSCO Grants Memorandum and POSCO Grants Memorandum. Some of these R&D grants were examined in previous reviews of this order and were found to provide countervailable benefits for the same reasons. See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 73 FR 2444 (January 15, 2008) (2005 CORE from Korea), and accompanying Issues and Decision Memorandum at Comment 1 (2005 CORE from Korea Decision Memorandum); see also CORE from Korea 2006 Decision Memorandum, at “Research and Development Grants Under the Industrial Development Act.” In this administrative review, there is no information on the record that demonstrates that the R&D projects in question could not be used in the production of subject merchandise or that this new technology is limited to the development of non-subject merchandise. Therefore, we find in these preliminary results, as in prior reviews, that the R&D grants in question provide a countervailable benefit to HYSCO and POSCO during the POR.

To determine the benefit from the grants that HYSCO and POSCO received through KANIST, we calculated the GOK’s contribution for each R&D project that was apportioned to each company. See 19 CFR 351.504(a). Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grants over a 15-year AUL by dividing the GOK approved grant amount by each company’s total sales in the year of approval. Because the approved amounts were less than 0.5 percent of each company’s total sales, we expensed the grants to the year(s) of receipt. Next, to calculate the net subsidy rate, we divided the portion of the benefit allocated to the POR by HYSCO’s and POSCO’s total f.o.b. sales for 2007, respectively. See 19 CFR 351.525(b)(3). On this basis, we preliminarily determine net subsidy rates under this

program to be 0.02 percent *ad valorem* for HYSCO and 0.01 percent *ad valorem* for POSCO.

With respect to POSCO’s project with KCERA, we performed the grant calculation applying the same methodology described above for the grants received through KANIST. For the POR, we preliminarily determine the net subsidy rate for the grant received through KCERA under this program to be less than 0.005 percent *ad valorem* which, consistent with the Department’s practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. See, e.g., CORE from Korea 2006 Decision Memorandum, at “Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions from 2002–2006.” Consequently, we preliminarily determine that it is unnecessary for the Department to make a finding with regard to the countervailability of the R&D grants under IDA through KCERA.

C. R&D Grants Under the Promotion of Industrial Technology Innovation Act

The GOK, through the MKE, provides R&D grants to promote a company’s productivity and industrial competitiveness using industrial technology (IT) infrastructure under the Promotion of Industrial Technology Innovation Act (PITIA), which was established in 2006. The funding of an R&D project under the PITIA is shared by the company and the GOK, with the government contributing up to 50 percent of the project’s costs. To be eligible to participate in this program, the applicant must meet the qualifications set forth in the basic plan issued by MKE and perform R&D as set forth in the Notice of IT Innovation Network Organization Business. Applications are submitted to the Korea E-Business Association. If a company’s application is approved, MKE and the company enter into an R&D contract and MKE provides the grants. R&D grants under the PITIA are provided with respect to specific projects, which are generally multi-year projects, where the amount of funds to be received each year from the GOK is set out in the original contract.

During the POR, HYSCO was the only responding company that benefitted from this program. HYSCO reported that it led a consortium of several companies in a project for IT network innovation and that the project was unrelated to the production of subject merchandise.

In its response, the GOK provided a copy of the “Notice for Recruiting Participating Industries in IT Innovation Network Organization Business for

2006.” See GOK’s November 25, 2008, Questionnaire Response, at Exhibit G–15. The notice states that grants for IT new technology were limited to certain industries, *i.e.*, motor, steel, shipbuilding, textile, distribution, and others. The notice further states that “one consortium from each industry applicable for applying” for grants in 2006 would be selected. *Id.* The “Application Form for IT Innovation Network Organization Business” also contains the eligibility limitation stating that the “application” industry is “one of automobile, steel, fabric, paper, others.” See GOK’s November 25, 2008, Questionnaire Response, at Exhibit G–14. The GOK further reported that during 2006, 13 consortia applied for benefits under the PITIA and just four consortia received approval for financial assistance. See GOK’s February 25, 2009, Supplemental Questionnaire Response, at 3.

Because R&D grants under the PITIA were expressly limited to certain industries in 2006, we preliminarily find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. We further preliminarily find that grants provided under the PITIA constitute a financial contribution and confer a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively.

With respect to HYSCO’s statement that the R&D grants are unrelated to the production of subject merchandise, we preliminarily find that the information on the record demonstrates that the grants for IT network innovation benefit the company’s business processes and all of its product lines and, therefore, the grants are not limited to non-subject merchandise. See Memorandum to the File titled “HYSCO’s R&D Grants Under the PITIA” (August 31, 2009), of which a public version is on file in the CRU. To determine the benefit from the grants that HYSCO received under the PITIA, we first calculated the GOK’s total contribution to the project that was apportioned to HYSCO. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grant over HYSCO’s AUL by dividing the total amount of the GOK’s contribution by HYSCO’s total sales in the year the total grant amount was approved. Because the approved amount was less than 0.5 percent of HYSCO’s total sales, we expensed the grants in the year of receipt. Next, to calculate the net subsidy rate, we divided the portion of the benefit allocated to the POR by HYSCO’s total f.o.b. sales for 2007. See 19 CFR 351.525(b)(3). On this basis, we preliminarily determine the net subsidy

rate under this program to be 0.02 percent *ad valorem* for HYSCO.

D. Short-Term Export Financing

KEXIM supplies two types of short-term loans for exporting companies, short-term trade financing and comprehensive export financing. KEXIM provides short-term loans to Korean exporters that manufacture goods under export contracts. The loans are provided up to the amount of the bill of exchange or contracted amount less any amount already received. For comprehensive export financing loans, KEXIM supplies short-term loans to any small or medium-sized company, or any large company that is not included in the five largest conglomerates based on their comprehensive export performance. To obtain the loans, companies must report their export performance periodically to KEXIM for review. Comprehensive export financing loans cover from 50 to 90 percent of the company’s export performance; however, the maximum loan amount is restricted to 30 billion won.

In *Steel Products From Korea*, the Department determined that the GOK’s short-term export financing program was countervailable. See *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea*, 58 FR 37338, 37350 (July 9, 1993) (*Steel Products From Korea*); see also *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102, (October 3, 2002) (*Cold-Rolled Investigation*), and accompanying Issues and Decision Memorandum (Cold-Rolled Decision Memorandum) at “Short-Term Export Financing.” No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, we continue to find this program countervailable. Specifically, we preliminarily determine that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act to the extent that the amount of interest the respondents paid for export financing under this program was less than the amount of interest that would have been paid on a comparable short-term commercial loan. See discussion above in the “Subsidies Valuation Information” section with respect to short-term loan benchmark interest rates. In addition, we preliminarily

determine that the program is specific, pursuant to section 771(5A)(A) of the Act, because receipt of the financing is contingent upon exporting. Dongbu, HYSCO, and POCOS, POSCO’s affiliate, reported using short-term export financing during the POR.

Pursuant to 19 CFR 351.505(a)(1), to calculate the benefit under this program, we compared the amount of interest paid under the program to the amount of interest that would have been paid on a comparable commercial loan. As our benchmark, we used the short-term interest rates discussed above in the “Subsidies Valuation Information” section. To calculate the net subsidy rate, we divided the benefit by the f.o.b. value of the respective company’s total exports. On this basis, we determine the net subsidy rate to be 0.01 percent *ad valorem* for Dongbu. In the case of HYSCO and POSCO, we find the net subsidy rate to be less than 0.005 percent *ad valorem*, which consistent with the Department’s practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. See, *e.g.*, CORE from Korea 2006 Decision Memorandum at “GOK’s Direction of Credit.”

E. Reduction in Taxes for Operation in Regional and National Industrial Complexes

Under Article 46 of the Industrial Cluster Development and Factory Establishment Act (Industrial Cluster Act), a state or local government may provide tax exemptions as prescribed by the Restriction of Special Taxation Act. In accordance with this authority, Article 276 of the Local Tax Act provides that an entity that acquires real estate in a designated industrial complex for the purpose of constructing new buildings or enlarging existing facilities is exempt from the acquisition and registration tax. In addition, the entity is exempt from 50 percent of the property tax on the real estate (*i.e.*, the land, buildings, or facilities constructed or expanded) for five years from the date the tax liability becomes effective. The exemption is increased to 100 percent of the relevant land, buildings, or facilities that are located in an industrial complex outside of the Seoul metropolitan area. The GOK established the tax exemption program under Article 276 in December 1994, to provide incentives for companies to relocate from populated areas in the Seoul metropolitan region to industrial sites in less populated parts of the country. The program is administered by the local tax officials of the county where the industrial complex is located.

During the POR, pursuant to Article 276 of the Local Tax Act, HYSCO received exemptions from the acquisition tax, registration tax, and property tax based on the location of its manufacturing facilities, Suncheon Works, in the Yulchon Industrial Complex, a government-sponsored industrial complex designated under the Industrial Cluster Act. In addition, HYSCO received an exemption from the local education tax during the POR. The local education tax is levied at 20 percent of the property tax. The property tax exemption, therefore, results in an exemption of the local education tax. Dongbu and POSCO did not receive tax exemptions under Article 276 during the POR.

In the *CFS Paper Investigation*, the Department determined that the tax exemptions under Article 276 of the Local Tax Act are countervailable subsidies. See *CFS Paper Decision Memorandum* at “Reduction in Taxes for Operation in Regional and National Industrial Complexes.” No new information or evidence of changed circumstances from HYSCO or the GOK was presented in this review to warrant a reconsideration of the countervailability of this program. We, therefore, continue to find this program countervailable. Specifically, we preliminarily find that the tax exemptions that HYSCO received constitute a financial contribution and confer a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. We further preliminarily find that the tax exemptions are regionally specific under section 771(5A)(D)(iv) of the Act because the exemptions are limited to an enterprise or industry located within designated geographical regions in Korea.

To calculate the benefit, we divided HYSCO’s total tax exemptions by the company’s total f.o.b. sales value for 2007. On this basis, we preliminarily determine the net subsidy rate to be less than 0.005 percent *ad valorem*, which consistent with the Department’s practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. See, e.g., *CORE from Korea 2006 Decision Memorandum* at “GOK’s Direction of Credit.”

F. Other Subsidies Related to Operations at Asan Bay: Provision of Land and Exemption of Port Fees Under the Harbor Act

1. Provision of Land

The GOK’s overall development plan is published every 10 years and describes the nationwide land

development goals and plans for the balanced development of the country. Under these plans, the Ministry of Construction and Transportation (MOCAT) prepares and updates its Asan Bay Area Broad Development Plan. See, e.g., *Cold-Rolled Decision Memorandum*, at “Provision of Land at Asan Bay.” See also *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413, 53418 (September 11, 2006) (*Preliminary Results of CORE from Korea 2004*), unchanged in *Final Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 119 (January 3, 2007) (*CORE from Korea 2004*). The Korea Land Development Corporation (Koland) is a government investment corporation that is responsible for purchasing, developing, and selling land in the industrial sites. *Id.*

In the *Cold-Rolled Investigation*, we verified that the GOK, in setting the price per square meter for land at the Kodai industrial estate, removed the 10 percent profit component from the price charged to Dongbu. See *Cold-Rolled Decision Memorandum*, at “Provision of Land at Asan Bay.” In the *Cold-Rolled Investigation*, we further explained that companies purchasing land at Asan Bay must make payments on the purchase and development of the land before the final settlement. However, in the case of Dongbu, we found that the GOK provided an adjustment to Dongbu’s final payment to account for “interest earned” by the company for the pre-payments. *Id.* POSCO and HYSCO did not use this program.

In the *Cold-Rolled Investigation*, we determined that the price discount and the adjustment of Dongbu’s final payment to account for “interest earned” by the company on its pre-payments were countervailable subsidies. Specifically, the Department determined that they were specific under section 771(5A)(D)(iii)(I) of the Act, as they were limited to Dongbu. *Id.* Further, the Department found the price discount and the price adjustment for “interest earned” constituted financial contributions and conferred benefits under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. *Id.* No new information or evidence of changed circumstances from Dongbu or the GOK was presented in this review to warrant a reconsideration of the countervailability of this program. Therefore, we continue to find this program countervailable in this case.

Consistent with the *Cold-Rolled Investigation*, we have treated the land price discount and the interest earned refund as non-recurring subsidies. *Id.* In accordance with 19 CFR 351.524(b)(2), because the grant amounts were more than 0.5 percent of the company’s total sales in the year of receipt, we applied the Department’s standard grant methodology, as described under 19 CFR 351.524(d)(1), and allocated the subsidies over a 15-year allocation period. See the “Average Useful Life” section, above. To calculate the benefit from these grants, we used as our discount rate the rates described above in the “Subsidies Valuation Information” section. We then summed the benefits received by Dongbu during the POR. We calculated the net subsidy rate by dividing the total benefit attributable to the POR by Dongbu’s total f.o.b. sales for the POR. On this basis, we determine a net countervailable subsidy rate for Dongbu of 0.18 percent *ad valorem* for the POR.

2. Exemption of Port Fees Under Harbor Act

Under the Harbor Act, companies are allowed to construct infrastructure facilities at Korean ports; however, these facilities must be deeded back to the government. Because the ownership of these facilities reverts to the government, the government compensates private parties for the construction of these infrastructure facilities. Because a company must transfer to the government its infrastructure investment, under the Harbor Act, the GOK grants the company free usage of the facility and the right to collect fees from other users of the facility for a limited period of time. Once a company has recovered its cost of constructing the infrastructure, the company must pay the same usage fees as other users of the infrastructure. In the *Cold-Rolled Investigation*, the Department found that Dongbu received free use of harbor facilities at Asan Bay based upon both its construction of a port facility as well as a road that the company built from its plant to its port. See *Cold-Rolled Decision Memorandum*, at “Dongbu’s Excessive Exemptions under the Harbor Act.” The Department also determined that Dongbu received an exemption of harbor fees for a period of almost 70 years under this program. *Id.* In the *Cold-Rolled Investigation*, the Department found the exemption from the fees to be a countervailable subsidy. No new evidence or information of changed circumstances was presented in this review to warrant any reconsideration of the countervailability

of this program. Consistent with the *Cold-Rolled Investigation*, we preliminarily find that the exemption of port fees constitutes a financial contribution in the form of revenue foregone and confers a benefit within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Further, we preliminarily find that the program is specific under section 771(5A)(D)(iii)(I) of the Act because the excessive exemption period of 70 years is limited to Dongbu. Thus, for purposes of these preliminary results, we continue to find this aspect of the program countervailable.

In the *Cold-Rolled Investigation*, the Department determined that the benefit from the program is equal to the average yearly amount of harbor fees exemptions provided to Dongbu. *Id.* For purposes of these preliminary results, we have employed the same benefit calculation. To calculate the net subsidy rate, we divided the average yearly amount of exemptions by Dongbu's total f.o.b. sales for the POR. On this basis, we preliminarily determine that Dongbu's net subsidy rate under this program is 0.02 percent *ad valorem*.

II. Programs Preliminarily Determined Not to Confer a Benefit During the POR

A. Energy Savings Fund Program

The Energy Savings Fund (ESF) program provides financing for investment in projects and equipment that use energy efficiently. In the *DRAMS Investigation*, the Department analyzed ESF loans separately from the direction of credit allegation and found that the loans were not specific within the meaning of section 771(5A) of the Act during the period of investigation (POI), which was January 1, 2001, through June 30, 2002. *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMS Investigation*), and accompanying Issues and Decision Memorandum (DRAMS Investigation Decision Memorandum) at "ESF Program" and "Comment 24." In the instant review, HYSCO reported that, during the POR, the company had outstanding balances for ESF loans that were received in 2000. The Department's specificity finding in the *DRAMS Investigation* did not cover the year 2000. *See Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 16766, 16775 (April 7, 2003) (unchanged in final results, 68 FR 37122 (June 23, 2003)). However,

because there is no measurable benefit for this program, we preliminarily determine that it is unnecessary for the Department to make a determination on the countervailability of ESF loans that were issued in 2000 as explained below.

We performed the loan benefit calculation applying the long-term benchmark interest rates described above in the "Subsidies Valuation Information" section. For the POR, we preliminarily determine the net subsidy rate under the ESF loan program to be less than 0.005 percent *ad valorem*, which, consistent with the Department's practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. *See, e.g., CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit."* This program was not used by Dongbu or POSCO.

B. R&D Grants Under the Act on the Promotion of the Development of Alternative Energy

During the POR, HYSCO received energy-related grants under the Act on the Promotion of the Development of Alternative Energy (Alternative Energy Act) for an R&D project in which the company participated with other firms.⁵ HYSCO reported that R&D grants under the Alternative Energy Act are provided with respect to specific projects, which are generally multi-year projects where the amount of funds to be provided by the GOK is set out in the project contract. The cost of R&D projects under this program is shared by the participating companies and the GOK.

We calculated the GOK's contribution to the project that was apportioned to HYSCO and then, in accordance with 19 CFR 351.524(b)(2), determined whether to allocate the non-recurring benefit from the grant over HYSCO's AUL by dividing the total amount of the GOK's contribution by HYSCO's total sales in the year the grants were approved. Because the amount of the grants is less than 0.5 percent of the relevant sales, we expensed the benefits from the grants to the year of receipt. We preliminarily determine the subsidy rate under this program to be less than 0.005

⁵ In the initial questionnaire responses, both HYSCO and the GOK reported that HYSCO received these grants related to energy use under the Energy Use Rationalization Act. *See* HYSCO's November 24, 2008 Questionnaire Response, at 17; and GOK's November 25, 2008 Questionnaire Response, at Exhibit G-8. In their supplemental questionnaire responses, HYSCO and GOK corrected their earlier statements and reported that the energy grants were provided under the Act on the Promotion of Development of Alternative Energy. *See* HYSCO's February 26, 2009 Supplemental Questionnaire Response, at Exhibit G-7 and Exhibit G-16; and GOK's February 25, 2009 Supplemental Questionnaire Response, at 1.

percent *ad valorem*, which, consistent with the Department's practice, does not confer a measurable benefit and is not included in the calculation of the net countervailable rate. *See, e.g., CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit."* Consequently, we preliminarily determine that it is unnecessary for the Department to make a finding as to the countervailability of this program in this review. If a future administrative review of this proceeding is requested, we will further examine grants provided under the Alternative Energy Act.

C. Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program

The GOK enacted KEXIM's Trade Bill Rediscount program in July 1998. From July 1998 to May 2004, KEXIM rediscounted the actual D/A and export letter of credit (L/C) (*e.g.,* export usance loans) financing of exporters that had first been discounted by commercial banks. However, after May 18, 2004, KEXIM switched to a rediscount ceiling method with Korean commercial banks. Under the ceiling method, KEXIM calculates the rediscount ceiling for participating commercial banks on a quarterly basis based on the total D/A or export L/C financing provided by the banks during the previous period, the banks' projected rediscounts, and the banks' credit rating. Under the trade bill rediscounting program, exporters first discount their D/As and export L/Cs with banks that are participating in the program. The banks, in turn, discount promissory notes with KEXIM. Dongbu had D/A loans outstanding under the program during the POR from banks that participated in the KEXIM rediscount program. We preliminarily determine that HYSCO and POSCO did not use the program during the POR.

The Department found this program countervailable in the *CFS Paper Investigation*. *See* CFS Paper Decision Memorandum at "Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program." For purposes of these preliminary results, we find that no information was submitted in this review that warrants reconsideration of our finding in the *CFS Paper Investigation* regarding this program.

We also find that companies do not know whether commercial banks subsequently rediscount their D/A loans with KEXIM nor does KEXIM link rediscounts to individual loans or exporters. Further, we find that KEXIM's rediscount ceiling represents only a portion of participating banks' total discounts on export loans during

the POR. Therefore, we are pro-rating benefits under this program by the percentage of loans each bank rediscounted with KEXIM under the program.

To determine whether a benefit was conferred, we first compared the amount Dongbu paid on its D/A loans outstanding during the POR to the amount it would pay on comparable commercial short-term financing that it could obtain on the market. See 19 CFR 351.505(a). For our benchmark, we have used Dongbu's weighted-average interest rate on its foreign currency, commercial short-term loans outstanding during the POR. See 19 CFR 351.505(a)(2)(iv). Where unavailable, in accordance with 19 CFR 351.505(a)(3)(ii), we have used the short-term lending rate for the POR, as published in the IMF's *International Financial Statistics Yearbook*. Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rate paid by Dongbu on its D/A loans is a discounted rate. Therefore, for benchmark interest rates that were not already discounted, it was necessary to derive a discounted benchmark interest rate from Dongbu's company-specific weighted-average interest rates for short-term commercial loans. For Dongbu, we preliminarily determine that there is no benefit during the POR because the benchmark interest rate is lower than the interest rates that the company actually paid.

D. D/A Loans Issued by the Korean Development Bank and Other Government-Owned Banks

Of the D/A loans rediscounted under KEXIM's trade bill rediscount program, Dongbu received D/A loans from such government-owned banks as the Korean Development Bank (KDB). In the *CFS Paper Investigation*, we found this program countervailable. See CFS Paper Decision Memorandum at "D/A Loans Issued by the KDB and Other Government-Owned Banks." For purposes of these preliminary results, we find that no information was submitted in this review that warrants reconsideration of our finding in the *CFS Paper Investigation* regarding this program.

To calculate the benefit, we compared the amount of interest paid on the government loan to the amount of interest that would have been paid on comparable commercial short-term financing that could have been obtained on the market. See 19 CFR 351.505(a). For our benchmark, we have used the Dongbu's weighted-average interest rate on its commercial short-term loans

outstanding during the POR. See 19 CFR 351.505(a)(2)(iv). Where unavailable, in accordance with 19 CFR

351.505(a)(3)(ii), we have used the short-term lending rate for the POR, as published in the IMF's *International Financial Statistics Yearbook*. Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rate paid by Dongbu on its D/A loans is a discounted rate. Therefore, it was necessary to derive a discounted benchmark interest rate from Dongbu's company-specific weighted-average interest rates for short-term commercial loans, pursuant to 19 CFR 351.505(a)(2)(iv). See the "Subsidies Valuation Information" section above at "Benchmarks for Short-Term Financing." For Dongbu, we preliminarily determine that there is no benefit during the POR because the benchmark interest rate is lower than the interest rates that the company actually paid.

We preliminarily determine that POSCO and HYSCO did not use this program during the POR.

E. GOK's Direction of Credit for Loans Issued Prior to 2002

In *CORE from Korea 2006*, the Department determined the GOK ended its practice of directing credit to the steel industry as of 2002. However, during 2007, respondents had outstanding loans that were provided prior to 2002.

In accordance with 19 CFR 351.505(c)(2) and (4), we calculated the benefit for each fixed- and variable-rate loan received prior to 2002 as the difference between the actual amount of interest paid on the directed loan during the POR and the amount of interest that would have been paid during the POR at the benchmark interest rate. We conducted our benefit calculations using the benchmark interest rates described in the "Subsidies Valuation Information" section above. For foreign currency-denominated loans, we converted the benefits into Korean won. We then summed the benefits from each company's long-term fixed-rate and variable-rate loans.

To calculate the net subsidy rate, we divided the companies' total benefits by their respective total f.o.b. sales values during the POR, as this program is not tied to exports or a particular product. In calculating the net subsidy rate for POSCO, we removed from the denominator sales made between affiliated parties.⁶ For POSCO, Dongbu,

and HYSCO, we preliminarily determine the net subsidy rate under the direction of credit program to be less than 0.005 percent *ad valorem*, which pursuant to the Department's practice we find to be not measurable. See, *e.g.*, CORE from Korea 2006 Decision Memorandum at "GOK's Direction of Credit." Because any benefits stemming from respondents' outstanding loans issued prior to 2002 are not measurable during the POR, we preliminarily determine that no benefit was received under this program.

F. Overseas Resource Development Program

The GOK enacted the Overseas Resource Development (ORD) Business Act in order to establish the foundation for securing the long-term supply of essential energy and major material minerals, which are mostly imported because of scarce domestic resources. Pursuant to Article 11 of this Act, the Ministry of Knowledge Economy (MKE) annually announces its budget and the eligibility criteria to obtain a loan from MKE. Any company that meets the eligibility criteria may apply for a loan to MKE. The loan evaluation committee evaluates the applications, selects the recipients and gets the approval from the minister of MKE. For projects that are related to petroleum and natural gas, the Korea National Oil Corporation (KNOC) lends the funds to the company for foreign resources development. An approved company enters into a borrowing agreement with KNOC for the development of the selected resource. Two types of loans are provided under this program: "General loans" and "success-contingent loans." For a success-contingent loan, the repayment obligation is subject to the results of the development project. In the event that the project fails, the company will be exempted from all or a portion of the loan repayment obligation. However, if the project succeeds, a portion of the project income is payable to KNOC.

During the POR, POSCO reported in its 2006–2007 audited non-consolidated financial statements that it had received a success-contingent loan from KNOC. See POSCO's November 24, 2008 Questionnaire Response, at Exhibit 7. Because the repayment of this liability is contingent on subsequent events, the Department would treat the balance on this unpaid liability as a contingent-liability interest-free loan, pursuant to 19 CFR 351.505(d). We performed the loan benefit calculation applying the

⁶ For POSCO, we also removed intra-company sales from the denominators of the net subsidy rate

calculations of the other programs found countervailable in these preliminary results. This step was not necessary for Dongbu or HYSCO.

long-term benchmark interest rates described above in the “Subsidies Valuation Information” section. For the POR, we preliminarily determine that the net subsidy rate under the ORD loan program is less than 0.005 percent *ad valorem*. Where the countervailable subsidy rate for a program is less than 0.005 percent, the Department considers the net subsidy rate to be not measurable and excludes the net subsidy rate from the total CVD rate. See, e.g., CORE from Korea 2006 Decision Memorandum at “GOK’s Direction of Credit.” Hence, we preliminarily find that this loan does not confer a measurable benefit to POSCO. Accordingly, it is unnecessary to make a finding as to the countervailability of this program for this POR. We will include an examination of this program in future administrative reviews.

Dongbu and HYSCO did not use this program during the POR.

III. Programs Preliminarily Determined To Be Not Countervailable

A. GOK’s Direction of Credit for Loans Issued After 2001

In *CORE from Korea 2006*, the Department determined that the GOK no longer has a systemic practice of directing credit within the Korean financial sector and that directed credit within the Korean steel industry ended as of 2002. See *CORE from Korea 2006 Decision Memorandum* at “GOK’s Direction of Credit.” As there has been no information submitted in this review to warrant reconsideration of our finding in *CORE from Korea 2006*, we continue to find that there is no directed credit to the Korean steel industry from 2002.⁷ As in *CORE from Korea 2006*, our decision is restricted to the post-2001 period.⁸ Because this program was

⁷ See, e.g., *Preliminary Results of Countervailing Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 52770, 52772 (September 7, 2006) (unchanged in final results, *Corrosion-Resistant Carbon Steel Flat Products From France: Final Results of Countervailing Duty Administrative Review*, 71 FR 68549 (November 26, 2006)): “If a program is determined to be non-countervailable in a previous proceeding, the Department will not normally reconsider such a determination in future proceedings absent evidence potentially contradicting that determination. We preliminarily find that there is no information on the record of the instant case, including this segment of the proceeding, that warrants a change to our earlier finding that this program is not specific and, therefore, not countervailable.”

⁸ Our determination in this regard does not change the decision that was made by the Department in *DRAMS Investigation* that there may still be instances in which the GOK may attempt to influence bank decisions on an *ad hoc* basis such as the government-led financial restructuring of Hynix. See, e.g., *DRAMS Investigation* and *DRAMS*

found not countervailable in *CORE from Korea 2006*, we will no longer review this program in any further administrative review absent evidence of changed circumstances or new information.

B. Long-Term Loans From the KDB Issued in Years 2002 Through 2007

HYSCO, Dongbu, and POSCO had long-term loans that were issued by the KDB, a government policy bank, in years 2002 through 2007 on which they made interest payments during the POR. Therefore, in these preliminary results, we have analyzed whether the long-term KDB loans are countervailable. First, we analyzed whether the KDB issued long-term loans to respondents and/or the Korean steel industry in a manner that was specific within the meaning of section 771(5A) of the Act.

The Department has previously determined that long-term loans issued by the KDB during the period 2002 through 2006 are not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act because: (1) They are not based on exportation; (2) they are not contingent on the use of domestic goods over imported goods; and (3) the legislation and/or regulations do not expressly limit access to the subsidy to an enterprise or industry, or groups thereof, as a matter of law. See *CFS Paper Decision Memorandum* at “Long-Term Lending Provided by the KDB and Other GOK-Owned Institutions.” The Department’s finding in the *CFS Paper Investigation* that long-term loans issued by the KDB during the period 2002 through 2006 are not *de jure* specific was not limited to a particular industry or industries. *Id.* Therefore, in regard to this issue, we find that the Department’s determination in the *CFS Paper Investigation* is applicable to the instant review. Further, concerning this program, there is no information on the record of the instant review that warrants reconsideration of the Department’s prior finding of the absence of *de jure* specificity during the 2002 through 2006 period. On this basis, we preliminarily determine that the KDB’s issuance of long-term loans during the 2002 through 2007 period are not *de jure* specific within the meaning of sections 771(5A)(D)(i) and (ii) of the Act.

Where the Department finds no *de jure* specificity, section 771(5A)(D)(iii) of the Act also directs the Department to examine whether the benefits provided under the program are *de facto*

Investigation Decision Memorandum at “Direction of Credit and Other Financial Assistance.”

specific—that is, whether the benefits are specific as a matter of fact. Subparagraphs (I) through (IV) of section 771(5A)(D)(iii) of the Act stipulate that a program is *de facto* specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy whether considered on an enterprise or industry basis are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In response to the Department’s request, the GOK provided the Department with a breakdown of the issuance of long-term lending by the KDB, by industry, for the years 2001 through 2007. See GOK’s April 3, 2009 Questionnaire Response, at Exhibit A–7. In conducting our *de facto* specificity analysis, we identified all long-term loans issued by the KDB to POSCO, Dongbu, and HYSCO on which interest payments were made during the POR. We then analyzed the distribution of all long-term loans issued by the KDB across industry groups in the year in which HYSCO’s outstanding loans were issued as well as the two preceding years.⁹ Specifically, we compared the amount of long-term KDB loans issued to the “Base Metal Industry” (e.g., the steel industry) to the amount of long-term KDB loans issued to other industries.

Based on our analysis of the long-term KDB lending data coupled with the KDB lending data reported by POSCO, Dongbu, and HYSCO in their respective questionnaire responses, we preliminarily determine that respondent firms, as individual enterprises, did not receive KDB loans in a manner that was *de facto* specific as described under sections 771(5A)(D)(iii)(I) through (III) of the Act. Further, based on these comparisons, we preliminarily determine that the KDB did not issue loans to the steel industry in a manner that was *de facto* specific as described under sections 771(5A)(D)(iii)(II) and (III) of the Act. Lastly, we preliminarily determine that there is no evidence on the record of the instant review indicating that the GOK exercised

⁹ The GOK was able to provide information concerning the amount of loans the KDB issued to each industry during the period 2001 through 2007. Therefore, when analyzing whether loans issued in 2002 were specific, we were only able to analyze lending patterns during the period 2001 and 2002.

discretion in the decision to issue long-term KDB loans which indicates that the steel industry was favored over other industries within the meaning of section 771(5A)(D)(iii)(IV) of the Act. For further information, see Memorandum to the File titled "Analysis of KDB Lending Data" (August 31, 2009), which is a public document on file in the CRU.

On this basis, we preliminarily determine that the long-term loans that POSCO, Dongbu, and HYSCO received from the KDB during the years 2002 through 2007 are not specific within the meaning of section 771(5A) of the Act, and, therefore, we preliminarily determine that they are not countervailable.

C. Restriction of Special Taxation Act (RSTA) Article 94: Equipment Investment To Promote Worker's Welfare

Under Article 94 of the Restriction of Special Taxation Act and its enforcement decree, a company that invests in facilities to promote employees' welfare may deduct an amount equivalent to 7 percent of the acquisition value of the facilities from its income tax. See GOK's November 25, 2008, Questionnaire Response, at Exhibit B-1. In the *Cold-Rolled Investigation*, the Department determined that the tax credit was only available for companies using domestic machines and equipment and was therefore countervailable. See *Cold-Rolled Decision Memorandum* at "Investment Tax Credits." In this administrative review, POSCO reported that it earned tax credits under RSTA Article 94 in fiscal year 2006 and used the tax credit on the tax return filed during the POR.

In its November 25, 2008, Questionnaire Response, the GOK explained that the eligibility requirement for home-produced machines and materials in the Tax Reduction and Control Act (TERCL) Article 88 (the predecessor program to RSTA Article 94) was deleted through amendment by Act No. 5534 of April 10, 1998 in compliance with eliminating prohibited subsidies under the World Trade Organization (WTO). See GOK's November 25, 2009, Questionnaire Response, at Exhibit B-5. The GOK further explained that RSTA Article 94 in its current form provides a tax credit of 7 percent, has no domestic content requirement, and the program expires in 2009. See GOK's November 25, 2008, Questionnaire Response, at 11. The GOK affirmed that POSCO claimed its tax credit pursuant to the January 1, 2004 version of RSTA Article 94, which was in effect from January 1, 2004, to

December 31, 2006. See GOK's May 27, 2009, Questionnaire Response, at 1. Therefore, we preliminarily determine that POSCO did not receive a countervailable benefit under RSTA Article 94 because the program is no longer an import substitution program. Furthermore, this program is available and used by all companies and industries in Korea that invest in facilities that promote employee welfare, and thus, is not specific under 771(5A)(D) of the Act.

IV. Programs Preliminarily Determined To Be Not Used

- Reserve for Research and Manpower Development Fund Under RSTA Article 9 (TERCL Article 8);
- RSTA Article 11: Tax Credit for Investment in Equipment to Development Technology and Manpower (TERCL Article 10);
- Reserve for Export Loss Under TERCL Article 16;
- Reserve for Overseas Market Development Under TERCL Article 17;
- Reserve for Export Loss Under TERCL Article 22;
- Exemption of Corporation Tax on Dividend Income from Overseas Resources; Development Investment Under TERCL Article 24;
- Tax Credits for Temporary Investments Under TERCL Article 27;
- Social Indirect Capital Investment Reserve Funds Under TERCL Article 28;
- Energy-Savings Facilities Investment Reserve Funds Under TERCL Article 29;
- Reserve for Investment (Special Cases of Tax for Balanced Development Among Areas Under TERCL Articles 41-45);
- Tax Credits for Specific Investments Under TERCL Article 71;
- Emergency Load Reduction Program;
- Electricity Discounts Under the Requested Loan Adjustment Program;
- Electricity Discounts Under the Emergency Load Reductions Program;
- Export Industry Facility Loans and Specialty Facility Loans;
- Local Tax Exemption on Land Outside of a Metropolitan Area;
- Short-Term Trade Financing Under the Aggregate Credit Ceiling Loan Program Administered by the Bank of Korea;
- Industrial Base Fund;
- Excessive Duty Drawback;
- Private Capital Inducement Act;
- Scrap Reserve Fund;
- Special Depreciation of Assets on Foreign Exchange Earnings;
- Export Insurance Rates Provided by the Korean Export Insurance Corporation;
- Loans from the National Agricultural Cooperation Federation;
- Tax Incentives from Highly Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an

individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 2007, through December 31, 2007, we preliminarily determine the net subsidy rate for Dongbu to be 0.21 percent *ad valorem*, 0.04 percent *ad valorem* for HYSCO, and 0.01 percent *ad valorem* for POSCO, all of which are *de minimis* rates. See 19 CFR 351.106(c)(1).

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to countervailable duties all shipments of subject merchandise produced by Dongbu, HYSCO, and POSCO, entered, or withdrawn from warehouse, for consumption from January 1, 2007 through December 31, 2007. The Department will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise produced by Dongbu, HYSCO, and POSCO, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

We will instruct CBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed administrative proceeding for each company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless

otherwise specified by the Department. See 19 CFR 351.309(d)(1). Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Pursuant to 19 CFR 351.305(b)(4), representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(i), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 31, 2009.

Ronald K. Lorentzen,
Acting Assistant Secretary for Import Administration.

[FR Doc. E9-21614 Filed 9-4-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-816]

Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review

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

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting the fifteenth administrative review of the antidumping order on corrosion-resistant carbon steel flat products

(CORE) from the Republic of (Korea). This review covers seven manufacturers and/or exporters (collectively, the respondents) of the subject merchandise: LG Chem., Ltd. (LG Chem), Haewon MSC Co. Ltd. (Haewon), Dongbu Steel Co., Ltd. (Dongbu); Hyundai HYSCO (HYSCO); Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, POSCO); and Union Steel Manufacturing Co., Ltd. (Union). The period of review (POR) is August 1, 2007, through July 31, 2008. We preliminarily determine that Union made sales of subject merchandise at less than normal value (NV). We preliminarily determine that HYSCO and POSCO have not made sales below NV.

In addition, based on the preliminary results for the respondents selected for an individual review, we have preliminarily determined a margin for those companies that were not selected for individual review. If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

EFFECTIVE DATE: September 8, 2009.

FOR FURTHER INFORMATION CONTACT: Dennis McClure (Union, POSCO, and all others), and Christopher Hargett (HYSCO), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5973, (202) 482-4161, and (202) 482-5075, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published the antidumping order on CORE from Korea. See *Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993) (*Orders on Certain Steel from Korea*). On August 1, 2008, we published in the **Federal Register** the *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 44966 (August 1, 2008). Between August 20, 2008, and September 2, 2008, respondents and petitioners¹ requested

¹ Petitioners are the United States Steel Corporation (U.S. Steel), Nucor Corporation

a review of Dongbu, HYSCO, POSCO, Union, Dongkuk Industries Co., Ltd. (Dongkuk), Haewon and LG Chem. The Department initiated a review of each of the companies for which a review was requested. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56794 (September 30, 2008).

On December 8, 2008, the Department selected HYSCO and Union as mandatory respondents in this review. See Memorandum from Christopher Hargett, International Trade Compliance Analyst, through James Terpstra, Program Manager, to Melissa Skinner, Director, Office 3, entitled "2007-2008 Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of Respondents for Individual Review," dated December 8, 2008. The Department indicated that it would calculate a weighted-average of the mandatory respondents' margins to apply to those companies not selected for individual examination.

On July 2, 2009, we published the notice of rescission of this antidumping duty administrative review with respect to Dongkuk because it had no sales of subject merchandise to the United States during the POR.²

On July 8, 2009, we reconsidered our resources and found it practicable to review POSCO as a voluntary respondent. Specifically, in other antidumping duty cases being conducted by the office, several review requests were withdrawn and/or respondents have ceased participating in the review. Moreover, POSCO submitted a timely response to the Department's questionnaire. Therefore, we selected POSCO as a voluntary respondent in the instant review.³

At the time we issued the questionnaire, during the most recently completed segments of the proceeding in which HYSCO and Union participated,⁴ the Department

(Nucor), and Mittal Steel USA ISG, Inc. (Mittal Steel USA).

² See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Rescission of Antidumping Duty Administrative Review, In Part*, 74 FR 28664 (June 17, 2009).

³ See memo from James Terpstra to Melissa Skinner entitled "2007-2008 Antidumping Duty Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Selection of POSCO as a Voluntary Respondent," dated July 8, 2009.

⁴ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review and Partial Rescission*, 73 FR 14220 (March 17, 2008) (*CORE 13 Final Results*); see also *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the*

disregarded sales below the cost of production (COP) that failed the cost test. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP. We instructed HYSCO and Union to respond to sections A–E of the initial questionnaire,⁵ which we issued on December 8, 2008. In its voluntary response, POSCO responded to sections A–E of the questionnaire.

On April 27, 2009, the Department published a notice extending the time period for issuing the preliminary results of the fifteenth administrative review to August 31, 2009.⁶

HYSCO

On February 11, 2009, HYSCO submitted its sections A–D response to the Department's initial questionnaire. HYSCO submitted its response to the Department's supplemental questionnaires for sections A–C on May 21, 2009, and July 23, 2009, and submitted its response to the Department's supplemental questionnaire for section D on August 27, 2009. HYSCO submitted a reconciliation of its home market and U.S. sales databases on August 10, 2009. The Department has used the COP database submitted on May 21, 2009, for these preliminary results, and will take into consideration the COP database submitted on August 27, 2009, for the final results.

Union

On January 14, 2009, Union submitted its section A response to the initial questionnaire. On February 5, 2009, Union submitted its response to sections B and C of the Department's questionnaire. On April 9, 2009, and June 24, 2009, Union submitted its responses to the Department's supplemental questionnaires for sections A–C. Union submitted a reconciliation of its home market and U.S. sales databases on August 10, 2009. On August 27, 2009, Union submitted

its response to the Department's supplemental questionnaire for section D. The Department has used the COP database submitted on February 4, 2009, for these preliminary results, and will take into consideration the COP database submitted on August 27, 2009, for the final results.

POSCO

On February 11, 2009 (the deadline applied to HYSCO), POSCO submitted its sections A through D response to the initial questionnaire. On August 7, 2009, POSCO submitted its response to the Department's supplemental questionnaire for Section D. POSCO submitted a reconciliation of its home market and U.S. sales databases on August 10, 2009.

Period of Review

The POR covered by this review is August 1, 2007, through July 31, 2008.

Scope of the Order

This order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is

achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.*, products which have been “worked after rolling”). Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin-free steel”), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all CORE products produced by the respondents, covered by the scope of the order, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to CORE sold in the United States.

Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the Appendix V physical characteristics reported by each respondent.

Normal Value Comparisons

To determine whether sales of CORE by the respondents to the United States were made at less than NV, we compared the Export Price (EP) or Constructed Export Price (CEP) to the NV, as described in the “Export Price/Constructed Export Price” and “Normal Value” sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and

Twelfth Administrative Review and Partial Rescission, 72 FR 13086 (March 20, 2007) (CORE 12 Final Results).

⁵ Section A: Organization, Accounting Practices, Markets and Merchandise; Section B: Comparison Market Sales; Section C: Sales to the United States; Section D: Cost of Production and Constructed Value; Section E: Further Manufacturing.

⁶ See *Corrosion-resistant Carbon Steel Flat Products From the Republic of Korea: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 19049 (April 27, 2009).

compared these to individual U.S. transactions.

Export Price/Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices and the applicable delivery terms to the first unaffiliated customer in, or for exportation to, the United States.

In accordance with section 772(a) of the Act, we calculated EP for a number of Union's U.S. sales because these sales were made before the date of importation and were sales directly to unaffiliated customers in the United States, and because CEP methodology was not otherwise indicated. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, and U.S. customs duty.

In accordance with section 772(b) of the Act, we calculated CEP where the record established that sales made by HYSCO, POSCO, and Union were made in the United States after importation. HYSCO's, POSCO's, and Union's respective affiliates in the United States (1) took title to the subject merchandise and (2) invoiced and received payment from the unaffiliated U.S. customers for their sales of the subject merchandise to those U.S. customers. Thus, where appropriate, the Department determined that these U.S. sales should be classified as CEP transactions under section 772(b) of the Act. Where appropriate, we made deductions from the starting price for foreign inland freight to the port, foreign brokerage, international freight, marine insurance, U.S. inland freight from the port to warehouse, U.S. warehouse expenses, U.S. inland freight from the warehouse to the unaffiliated customer, U.S. brokerage and handling expenses, U.S. customs duty, credit expenses,

warranty expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. See sections 772(c)(2)(A) and 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

HYSCO's Sales of Subject Merchandise that were Further Manufactured and Sold as Non-Subject Merchandise in the United States

In its section A questionnaire response, HYSCO requested that the Department excuse it from reporting information for certain POR sales of subject merchandise imported by its wholly owned U.S. subsidiary, HYSCO America Company (HAC), that were further manufactured after importation and sold as non-subject merchandise in the United States, claiming that determining CEP for sales through HAC would be unreasonably burdensome.

Section 772(e) of the Act provides that when the value added in the United States by an affiliated party is likely to exceed substantially the value of the subject merchandise, the Department shall use one of the following prices to determine CEP if there is a sufficient quantity of sales to provide a reasonable basis of comparison and the use of such sales is appropriate: (1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

The record evidence shows that the value added by the affiliated party to the subject merchandise after importation in the United States was significantly greater than the 65 percent threshold we use in determining whether the value added in the United States by an affiliated party substantially exceeds the value of the subject merchandise. See 19 CFR 351.402(c)(2). We then considered whether there were sales of identical subject merchandise or other subject merchandise sold in sufficient quantities by the exporter or producer to an unaffiliated person that could provide a reasonable basis of comparison. In addition to the sales to HAC that were further manufactured, HYSCO also had CEP sales of similar, but not identical, subject merchandise to unaffiliated customers in the United States in back-to-back transactions through another HYSCO affiliate in the United States, Hyundai HYSCO USA (HHU), and EP sales through an unaffiliated trading company.

The appropriate methodology for determining the CEP for sales whose value has been substantially increased through U.S. further manufacturing generally must be made on a case-by-case basis. In this instance, we find that there is a reasonable quantity of sales of subject merchandise to an unaffiliated person for comparison purposes. See "Calculation Memorandum for Hyundai HYSCO," dated August 31, 2009, the public version of which is on file in the Central Record Unit, Room 1117, of the main Department building. Further, another reasonable method for determining CEP for the HAC CEP sales is not evident. Therefore, we relied on HYSCO's other sales of similar merchandise to unaffiliated parties in the United States as the basis for calculating CEP for HYSCO's sales through HAC, which is consistent with the two previous administrative reviews of CORE from Korea.⁷

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. We increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act.

Where appropriate, we deducted inland freight from the plant to distribution warehouse, warehouse expense, inland freight from the plant/warehouse to customer, and packing, pursuant to section 773(a)(6)(B). Additionally, we made adjustments to NV, where appropriate, for credit and warranty expenses, in accordance with section 773(a)(6)(C)(iii) of the Act. Where appropriate, we added interest revenue and applied billing adjustments to the gross unit price.

For purposes of calculating NV, section 771(16) of the Act defines

⁷ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission*, 74 FR 11082 (March 16, 2009) (CORE 14 Final Results); see also *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 51584, 51586 (September 10, 2007) (unchanged in CORE 13 Final Results).

“foreign like product” as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. When no identical products are sold in the home market, the products which are most similar to the product sold in the United States are identified. For the non-identical or most similar products which are identified based on the Department’s product matching criteria, an adjustment is made to the NV for differences in cost attributable to differences in the actual physical differences between the products sold in the United States and the home market. See 19 CFR 351.411 and section 773(a)(6)(C)(ii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT.

Pursuant to 19 CFR 351.412, to determine whether EP or CEP sales and NV sales were at different LOTs, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm’s-length) customers. If the comparison market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

We did not make an LOT adjustment under 19 CFR 351.412(e) because, there was only one home market LOT for each respondent and we were unable to identify a pattern of consistent price differences attributable to differences in LOTs. See 19 CFR 351.412(d). Under 19 CFR 351.412(f), we are preliminarily granting a CEP offset for HYSCO, POSCO, and Union because the NV sales for each company are at a more

advanced LOT than the LOT for the U.S. CEP sales.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see the August 31, 2009, “Calculation Memorandum for Hyundai HYSCO,” “Calculation Memorandum for Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, POSCO),” and “Calculation Memorandum for Union Steel Manufacturing Co., Ltd.” the public versions of which are on file in the Central Records Unit, Room 1117 of the main Department building.

Cost of Production Analysis

In the most recently completed segment of the proceeding in which HYSCO, POSCO, and Union participated, the Department found and disregarded sales that failed the cost test for each of these companies. Therefore, for this review, the Department has reasonable grounds to believe or suspect that sales of the foreign like products under consideration for the determination of NV may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, the Department conducted a COP investigation of sales in the home market by HYSCO, POSCO and Union.

In accordance with section 773(b)(3) of the Act, the Department calculated company-specific COPs for HYSCO, POSCO, and Union based on the sum of each respondent’s cost of materials and fabrication employed in producing the foreign like product, plus amounts for selling, general and administrative expenses (SG&A), and packing costs. We relied on the COP data as submitted by HYSCO, POSCO, and Union, except for POSCO, where we excluded gains and losses related to disposition and valuation of trading securities from the calculation of financial expense ratio. See the August 31, 2009, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Pohang Iron & Steel Co., Ltd. and Pohang Coated Steel Co. Ltd. (collectively, “POSCO”).”

In determining whether home market sales had been made at prices below the COP, as required under sections 773(b)(1) of the Act, we compared the model-specific, weighted-average COPs to home market sales prices of the foreign like product. For this comparison, the Department adjusted the reported home market sales prices (not including value added tax (VAT)) by applying billing adjustments, adding interest revenue, and deducting

movement charges, discounts, and rebates, as appropriate.

To determine whether to disregard home market sales made at prices below the COP, the Department examined whether such sales were made (1) within an extended period of time, in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act.

Where 20 percent or more of a respondent’s sales of a given product during the POR were at prices less than the COP, we determined that sales of that model were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. Because the Department compared prices to average COPs in the POR, the Department has also determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

We tested and identified below-cost home market sales for HYSCO, POSCO, and Union. For each company we disregarded individual below-cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. See the August 31, 2009, “Calculation Memorandum for Hyundai HYSCO,” “Calculation Memorandum for Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, POSCO),” and “Calculation Memorandum for Union Steel Manufacturing Co., Ltd.”

Arm’s-Length Sales

HYSCO and POSCO also reported that they made sales in the home market to affiliated parties. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm’s length. See 19 CFR 351.403(c).

To test whether these sales were made at arm’s length, we compared the reported home market prices of sales to affiliated and unaffiliated customers with applied billing adjustment, including interest revenue and net of all movement charges, direct selling expenses, discounts, rebates, and packing. In accordance with the Department’s current practice, if the

prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices. See *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 71 FR 45017, 45020 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy*, 72 FR 7011 (February 14, 2007)); 19 CFR 351.403(c). Conversely, where we found that the sales to an affiliated party did not pass the arm's-length test, then all sales to that affiliated party have been excluded from the NV calculation. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002); see also August 31, 2009, "Calculation Memorandum for Hyundai HYSCO," "Calculation Memorandum for Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, POSCO)," and "Calculation Memorandum for Union Steel Manufacturing Co., Ltd."

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

Manufacturer/Exporter	Percent Margin
HYSCO	0.43 (de minimis)
POSCO	0.16 (de minimis)
Union	3.94
Review-Specific Average Rate Applicable to the Following Companies: ⁸ LG Chem, Haewon, and Dongbu	3.94

⁸This rate is based on the margins calculated for those companies that were selected for individual review, excluding de minimis margins or margins based entirely on adverse facts available.

Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in

accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs are limited to issues raised in the case briefs and may be filed no later than five days after the time limit for filing the case briefs. See 19 CFR 351.309(d). Parties submitting arguments in this proceeding are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities, in accordance with 19 CFR 351.309(d)(2). Further, parties submitting case and/or rebuttal briefs are requested to provide the Department with an additional electronic copy of the public version of any such comments on a computer diskette. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs in accordance with 19 CFR 351.310(d)(1). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results, unless extended. See section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h).

Assessment Rate

Upon completion of the final results of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific assessment rates for each respondent based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on the estimated entered value. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all

entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondents subject to this review for which the reviewed companies did not know that the merchandise which it sold to an intermediary (e.g. a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. For a full discussion of this clarification, see *id.*

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CORE from Korea 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 rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the all-others rate established in the LTFV. See *Orders on Certain Steel from Korea*. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-21594 Filed 9-4-09; 8:45 am]

BILLING CODE 3510-DS-S

COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Establish the FY 2009 schedule of fees.

SUMMARY: The Commission charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization (SRO) rule enforcement programs (17 CFR part 1 Appendix B) (National Futures Association (NFA), a registered futures association, and the contract markets are referred to as SROs). The calculation of the fee amounts to be charged for FY 2009 is based upon an average of actual program costs incurred during FY 2006, 2007, and 2008, as explained below. The FY 2009 fee schedule is set forth in the **SUPPLEMENTARY INFORMATION**.

Electronic payment of fees is required.

DATES: Effective Dates: The FY 2009 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than November 9, 2009.

FOR FURTHER INFORMATION CONTACT:

Stacy Dean Yochum, Deputy Executive Director, Commodity Futures Trading Commission, (202) 418-5157, Three Lafayette Centre, 1155 21st Street, NW.,

Washington, DC 20581. For information on electronic payment, contact Angela Clark, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418-5178.

SUPPLEMENTARY INFORMATION:

I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations¹ and designated contract markets (DCM), which are referred to as SROs, regulated by the Commission.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission:

Entity	Fee amount
Chicago Board of Trade	\$77,371
Chicago Mercantile Exchange ..	121,071
New York Mercantile Exchange	197,535
Kansas City Board of Trade	10,127
ICE Futures U.S.	32,683
Minneapolis Grain Exchange ...	62,449
HedgeStreet	14,375
Chicago Climate Futures Exchange	12,259
U.S. Futures Exchange	18,601
OneChicago	1,157
National Futures Association	179,641
Total	727,270

III. Background Information

A. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.² All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide

overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 109 percent for fiscal year 2006, 140 percent for fiscal year 2007, and 144 percent for fiscal year 2008.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which appears at 17 CFR Part 1 Appendix B, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year. Adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years. The formula for calculating the second factor is: $0.5a + 0.5 vt =$

¹ NFA is the only registered futures association.

² See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission Fees, see 52 FR 46070 (Dec. 4, 1987).

current fee. In this formula, “a” equals the average annual costs, “v” equals the percentage of total volume across DCMs over the last three years, and “t” equals

the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

	3-year average actual costs	3-year % of volume (percent)	2009 Fee (lesser of actual or calculated fee)
Chicago Board of Trade	\$77,371	31.0879	\$77,371
Chicago Mercantile Exchange	121,071	55.2977	121,071
New York Mercantile Exchange	306,092	11.2605	197,535
Kansas City Board of Trade	18,998	0.1591	10,127
ICE Futures U.S.	50,712	1.8545	32,683
Minneapolis Grain Exchange	124,466	0.0548	62,449
North American Derivatives Exchange	28,685	0.0082	14,375
Chicago Climate Futures Exchange	24,457	0.0076	12,259
U.S. Futures Exchange	37,173	0.0038	18,601
OneChicago	1,157	0.2367	1,157
Subtotal	790,181	547,628
National Futures Association	179,641	179,641
Total	969,822	727,270

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal \$124,466.

b. The alternative computation is:
(.5) (\$124,466) + (.5) (.000548) (\$790,181) = \$62,449

c. The fee is the lesser of a or b; in this case \$62,449.

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission’s average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2007 through 2009 was \$179,641 (one-third of \$538,923). The fee to be paid by the NFA for the current fiscal year is \$179,641.

Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds (See 31 U.S.C. 3720). For information about electronic payments, please contact Angela Clark at (202) 418-5178 or aclark@cftc.gov, or see the CFTC Web site at <http://www.cftc.gov>, specifically, <http://www.cftc.gov/cftc/cftcelectronicpayments.htm>.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered futures associations. The Commission has previously determined that contract markets and registered

futures associations are not “small entities” for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on September 1, 2009, by the Commission.

David Stawick,
Secretary of the Commission.

[FR Doc. E9-21545 Filed 9-4-09; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

Energy and Environmental Markets Advisory Committee Meeting

Errata Notice

On September 1, 2009, the Commodity Futures Trading Commission’s Energy and Environmental Markets Advisory Committee announced that it will conduct a meeting on Wednesday, September 16, 2009, from 8 a.m. until 11 a.m. in the Commission’s New York Regional Office, 140 Broadway, 19th Floor, New York, NY 10005, and is open to the public.

That Notice is corrected as follows:
The public access call-in number for U.S. and Canada is (888) 691-4252.

Issued by the Commission in Washington, DC on September 1, 2009.

Sauntia S. Warfield,
Assistant Secretary of the Commission.

[FR Doc. E9-21516 Filed 9-4-09; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of the Fiscal Year 2008 Department of Navy Services Contract Inventory Pursuant to Section 807 of the National Defense Authorization Act for Fiscal Year 2008

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Publication.

SUMMARY: In accordance with section 2330a of Title 10 United States Code as amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (FY 08) section 807, the Deputy Assistant Secretary of the Navy (DASN) for Acquisition and Logistics Management (A&LM) and the Office of the Director, Defense Procurement and Acquisition Policy (DPAP) will make available, to the public, an inventory of activities performed pursuant to contracts for services. The inventory will be published to the ASN (RDA) Web site at the following location: <https://acquisition.navy.mil/NDAAsection807>.

DATES: Inventory is to be made publically available not later than 30 days after August 4, 2009—the date which the DON inventory report was submitted to Congress.

ADDRESSES: Send written comments and suggestions concerning the inventory to the Deputy Assistant Secretary of the Navy for Acquisition and Logistics Management, 1000 Navy Pentagon, Suite BF-992, Washington DC 20350-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Yee, Strategic Sourcing, (703)

693-4019 or e-mail at Roger.Yee@navy.mil.

SUPPLEMENTARY INFORMATION: The FY08 NDAA section 807 amends section 2330a of Title 10 United States Code to require annual inventories and reviews of activities performed on services contracts. The Deputy Under Secretary of Defense (Acquisition and Technology) (DUSD(AT)) transmitted the Department of Navy inventory to Congress on August 4, 2009.

The Office of the DASN (A&LM) submitted the Department of Navy Fiscal Year 2008 Services Contract Inventory to the Office of the DPAPSS on June 30, 2009. Included with this inventory was a narrative that described the data collection process, the inventory data, and the on-going inventory review process. The inventory included such information as: calculated contractor full time equivalents; and, contract costs by organization, location, function, contract type, and funding source. The full report is located at the following Web site: <https://acquisition.navy.mil/NDAAsection807>. The inventory did not include specific contract numbers, contractor identification or proprietary or sensitive information.

Authority: 10 U.S.C. 2330a, part 137.

Dated: August 31, 2009.

T. M. Cruz,

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

[FR Doc. E9-21474 Filed 9-4-09; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Air Force

US Air Force Scientific Advisory Board Notice of Meeting

AGENCY: Department of the Air Force, US Air Force Scientific Advisory Board.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place on Wednesday and Thursday, October 7th-October 8th, 2009 at the SAF/AQ Conference and Innovation Center, 1560 Wilson Blvd., Arlington, VA 22209. The meeting on Wednesday, October 7th, will be from 8 a.m.-4:30 p.m., and the

meeting on Thursday, October 8th, will be from 7:45 a.m.-12:15 p.m.

The purpose of this Air Force Scientific Advisory Board quarterly meeting is to introduce the FY10 SAB study topics tasked by the Secretary of the Air Force and receive presentations that address relevant subjects to the SAB mission. The briefings and discussion will include presentations from senior Air Force and other DoD leadership. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that some sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c)(1) and (4). The two sessions on 7 Oct 09, from 0800-0945, will be open to the general public. The remaining sessions on 7 Oct 09 and 8 Oct 09 will be closed to the general public.

Because the meeting will take place in a controlled facility and seating is limited, any member of the general public wishing to attend the 7 Oct 09, 0800-0945, sessions need to call 301-981-7147 and provide their name not later than Monday, 5 Oct 09. You will need to arrive at the meeting facility between 7:30 a.m. and 7:45 a.m. that morning and have valid government identification in your possession.

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board can also submit a written statement in accordance with 41 CFR 102-3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Anthony M. Mitchell, 301-981-7135, United States Air Force Scientific Advisory Board, 1602 California Avenue, Suite #251, Andrews AFB, MD 20762, AnthonyM.mitchell@pentagon.af.mil.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9-21512 Filed 9-4-09; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education—European Union-United States Atlantis Program; Program for North American Mobility in Higher Education Program; United States-Brazil Higher Education Consortia Program; United States-Russia Program: Improving Research and Educational Activities in Higher Education

Catalog of Federal Domestic Assistance Numbers: 84.116J (European Union (EU)-United States (U.S.) Atlantis Program), 84.116N (Program for North American Mobility in Higher Education), 84.116M (U.S.-Brazil Higher Education Consortia Program), 84.116S (U.S.-Russia Program: Improving Research and Educational Activities in Higher Education).

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes one absolute priority for each of the four special focus competitions conducted by the Fund for the Improvement of Postsecondary Education (FIPSE): the EU-U.S. Atlantis Program, the Program for North American Mobility in Higher Education, the U.S.-Brazil Higher Education Consortia Program, and the U.S.-Russia Program: Improving Research and Educational Activities in Higher Education.

The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2010 and in later years. We take this action to focus Federal financial assistance on an identified need in the area of postsecondary education. We intend these absolute priorities to improve postsecondary education opportunities by supporting the formation of international educational consortia and encouraging cooperation in the coordination of curricula, the

exchange of students, and the opening of educational opportunities between the U.S. and the countries involved in these programs.

DATES: We must receive your comments on or before October 8, 2009.

ADDRESSES: Address all comments about this notice to Sarah Beaton, U.S. Department of Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544.

If you prefer to send your comments by e-mail, use the following address: comments@ed.gov. You must include the following information in the subject line of your electronic message: “Absolute Priorities for Special Focus International Competitions, FIPSE.”

FOR FURTHER INFORMATION CONTACT: Sarah Beaton. Telephone: (202) 502–7621 or by e-mail: Sarah.Beaton@ed.gov.

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about this notice in room 6154, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Fund for the Improvement of

Postsecondary Education (FIPSE) program is to support reforms, innovations, and significant improvements of postsecondary education that respond to problems of national significance and serve as national models. Under the FIPSE program, the Secretary makes grants for special projects concerning areas of national need.

Program Authority: 20 U.S.C. 1138–1138d.

Proposed Priorities

Background: FIPSE is authorized under title VII, part B, sections 741 through 745 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1138–1138d. Specifically, section 744 of the HEA authorizes the Secretary to make grants to institutions of higher education or consortia of such institutions with other public agencies and nonprofit organizations for innovative projects concerning areas of national need identified by the Secretary. Currently, these special projects include four international consortia programs: the EU-U.S. Atlantis Program (CFDA 84.116J), the Program for North American Mobility in Higher Education (CFDA 84.116N), the U.S.-Brazil Higher Education Consortia Program (CFDA 84.116M), and the U.S.-Russia Program: Improving Research and Educational Activities in Higher Education (CFDA 84.116S). Each of these programs, which are co-funded by the Department, through FIPSE, and its respective international government partners, supports multilateral, multi-institutional collaboration. In each program, the Department works solely with an agency from the other involved nation or international group to administer the program and choose grantees. The EU-U.S. Atlantis Program operates cooperatively with the European Commission, the Program for North American Mobility in Higher Education operates cooperatively with Human Resources and Social Development Canada and the Secretariat of Public Education in Mexico; the U.S.-Brazil Higher Education Consortia Program operates cooperatively with the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education; and the U.S.-Russia Program: Improving Research and Educational Activities in Higher Education operates cooperatively with the Russian Ministry of Education and Science.

Currently, the Secretary implements the EU-U.S. Atlantis Program, the Program for North American Mobility in Higher Education Program, the U.S.-Brazil Higher Education Consortia

Program, and the U.S.-Russia Program: Improving Research and Educational Activities in Higher Education through the use of invitational priorities announced in notices inviting applications that are published in the **Federal Register**. We do not give an application that meets an invitational priority a competitive or absolute preference over other applications. The Department seeks to establish absolute priorities for these programs because, in accordance with the international agreements establishing these programs, we intend to use the priorities to limit eligibility for funding under these programs to only those U.S. colleges and universities that partner with foreign colleges and universities in the countries involved in the four programs. As absolute priorities, the criteria contained in them would function as eligibility requirements. Only those entities meeting the eligibility requirements in the priority would be eligible for funding under these priorities.

The following proposed absolute priorities support the formation of international educational consortia and encourage cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities between the U.S. and the respective countries involved in each of the programs. Therefore, only applications proposing projects addressing the absolute priority will be reviewed and considered for award; applications that do not address the absolute priority will be disqualified.

Proposed Absolute Priority 1—EU-U.S. Atlantis Program (84.116J)

This priority supports the formation of educational consortia between the EU and U.S. institutions. To meet this priority, the applicant must propose a project that encourages cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities between the U.S. and countries in the EU. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution and the applicant in the EU must be an EU institution.

EU institutions participating in any consortium proposal under this priority may apply to the Directorate-General for Education and Culture (DG EAC), European Commission for funding under a separate but parallel EU competition.

Proposed Absolute Priority 2—Program for North American Mobility in Higher Education (84.116N)

This priority supports the formation of educational consortia of U.S., Canadian, and Mexican institutions. To meet this priority, the applicant must propose a project that supports cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities among the U.S., Canada, and Mexico. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution, the applicant in Mexico must be a Mexican institution, and the applicant in Canada must be a Canadian institution. Canadian and Mexican institutions participating in any consortium proposal under this priority may apply, respectively, to Human Resources and Social Development Canada (HRSDC) or the Mexican Secretariat for Public Education (SEP), for funding under separate but parallel Canadian and Mexican competitions.

Proposed Absolute Priority 3—U.S.-Brazil Higher Education Consortia Program (84.116M)

This priority supports the formation of educational consortia of U.S. and Brazilian institutions. To meet this priority, the applicant must propose a project that supports cooperation in the coordination of curricula; the exchange of students, if pertinent to grant activities; and the opening of educational opportunities between the U.S. and Brazil. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution and the applicant in Brazil must be a Brazilian institution. Brazilian institutions participating in any consortium proposal under this priority may apply to the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education, for funding under a separate but parallel Brazilian competition.

Proposed Absolute Priority 4—U.S.-Russian Program: Improving Research and Educational Activities in Higher Education (84.116S)

This priority supports the formation of educational consortia of U.S. and Russian institutions to encourage mutual socio-cultural-linguistic cooperation; the coordination of joint development of curricular, educational materials; and the exchange of students. In order to be eligible for an award under this priority, the applicant in the U.S. must be a U.S. institution and the

applicant in Russia must be a Russian institution. Russian institutions participating in any consortium proposal under this priority may apply to the Russian Ministry of Education and Science for funding under a separate but parallel Russian competition.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priorities

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities justify the costs.

We have determined, also, that this proposed regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review: These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

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

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

Dated: September 2, 2009.

Daniel T. Madzellan,
Director, Forecasting and Policy Analysis.
[FR Doc. E9-21608 Filed 9-4-09; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION**Proposed Information Collection—
Evaluation of EAC Educational
Products; Comment Request**

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces an information collection and seeks public comment on the provisions thereof. The EAC, pursuant to 5 CFR 1320.5(a)(iii), intends to submit this proposed information collection (Evaluation of EAC Educational Products) to the Director of the Office of Management and Budget for approval. The Evaluation of EAC Educational Products (Evaluation) asks election officials questions concerning the effectiveness, use, and overall satisfaction with the educational products by State and local election officials. The results of the evaluation will be used internally as a decision-making tool to guide the EAC's determination about future updates and reprints of these work products. Section 202 of HAVA requires EAC to serve as a national clearinghouse and resource for the compilation of information related to the administration of Federal elections. Section 202(3) authorizes EAC to conduct studies and to carry out other duties and activities to promote the effective administration of Federal elections.

DATES: Written comments must be submitted on or before 4 p.m. EDT on November 9, 2009.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The information collection tool is available on the EAC Web site (<http://www.eac.gov>).

Comments on the proposed information collection should be submitted electronically to producteval@eac.gov. Written comments on the proposed information collection can also be sent to the U.S.

Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, *Attn:* Educational Products Evaluation.

Obtaining a Copy of the Surveys and Focus Group Protocol: To obtain a free copy of the surveys and focus group protocol: (1) Access the EAC Website at <http://www.eac.gov>; (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, *Attn:* Educational Products Evaluation.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lynn-Dyson or Ms. Shelly Anderson at (202) 566-3100.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Evaluation of EAC Educational Products; OMB Number Pending.

Needs and Uses: This proposed information collection activity is necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). This data collection effort is authorized under the Help America Vote Act (HAVA). Section 202 of HAVA requires EAC to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections. Section 202(3) authorizes EAC to conduct studies and to carry out other duties and activities to promote the effective administration of Federal elections. Since 2004, the EAC has issued guidance on various topics to assist State and local election officials in managing and administering elections. This guidance includes a number of management guidelines, best practices, and other related reports. The specific products to be evaluated include: Effective Designs for the Administration of Federal Elections (Ballot Designs); Successful Practices—Poll Worker Recruitment, Training, and Retention; A Guidebook to Recruiting College Poll Workers; State Poll Worker Requirements Compendium; Election Management Guidelines; Quick Start Guides; Election Terminology Glossaries in Six Languages; and A Voter's Guide to Federal Elections. The Evaluation Contractor will conduct an evaluation of the effectiveness, use, and overall satisfaction with the aforementioned products by State and local election officials. The results of the evaluation will be used internally as a decision-making tool to guide the EAC's determination about future updates and reprints of these work products. The evaluation will include the use of surveys and focus groups.

There is one online survey for local election officials and one online survey for State election officials. Each survey is estimated to take 40 minutes to complete.

Affected Public (Respondents): State governments, the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands, and local entities.

Affected Public: State and local government.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Estimated Burden per Response: 40 minutes.

Estimated Total Annual Burden Hours: 2,000 hours.

Frequency: One-time data collection.

There will be three focus groups held with approximately 10 participants per group. Each focus group meeting is expected to last one and one-half hours.

Affected Public: Local government.

Number of Respondents: 30.

Responses per Respondent: 1.

Estimated Burden per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 45 hours.

Frequency: One-time data collection.

The following categories of information will be requested of local and State election officials via the surveys and focus groups:

- Familiarity with the EAC educational products;
- Use of EAC educational products;
- The impact of having used EAC educational products on administrative and/or election processes; and,
- Recommendations for improving existing products and/or creation of additional products.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9-21599 Filed 9-4-09; 8:45 am]

BILLING CODE 6820-KF-P

ELECTION ASSISTANCE COMMISSION**Proposed Information Collection—
2010 Election Administration and
Voting Survey; Comment Request**

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces an information collection and seeks public comment on the provisions thereof. The EAC, pursuant to 5 CFR 1320.5(a)(iii), intends to submit this proposed information collection (2010

Election Administration and Voting Survey) to the Director of the Office of Management and Budget for approval. The 2010 Election Administration and Voting Survey (Survey) asks election officials questions concerning voting and election administration. These questions request information concerning ballots cast; voter registration; overseas and military voting; Election Day activities; voting technology; and other important issues. The EAC issues the survey to meet its obligations under the Help America Vote Act to serve as national clearinghouse and resource for the compilation of information with respect to the administration of Federal elections; to fulfill its data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal Elections.

DATES: Written comments must be submitted on or before 4 p.m. EDT on November 9, 2009.

Comments: Public 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on the proposed information collection should be submitted electronically to electiondaysurvey@eac.gov. Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, *Attn:* Election Administration and Voting Survey.

Obtaining a Copy of the Survey: To obtain a free copy of the survey: (1) Access the EAC Web site at <http://www.eac.gov>; (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, *Attn:* Election Administration and Voting Survey.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lynn-Dyson or Ms. Shelly Anderson at (202) 566-3100.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* 2010 Election Administration and Voting Survey; OMB Number Pending.

Summary of the Collection of Information: The survey requests information on a state- and county-level (or township-, independent city-, borough-level, where applicable) concerning the following categories: *Voter registration applications (from the period of Federal General Election Day +1, 2008 through Federal General Election Day, 2010)*

(a) Total number of registered voters; (b) Number of active and inactive registered voters; (c) Number of persons who registered to vote on Election Day—only applicable to States with Election Day registration; (d) Number of voters who registered using online registration—only applicable to States that allow online registration; (e) Number of voter registration applications received from all sources; (f) Number of voter registration applications that were duplicates, invalid or rejected, new, changes of name, address, party, and not categorized; (g) Number of duplicate registration applications received from all sources; (h) Total number of removal/confirmation notices mailed to voters and the reason for removal; (i) total number of voters removed from the registration list or moved to the inactive registration list.

Uniformed & Overseas Citizens Absentee Voting Act (UOCAVA)

(a) Total number of UOCAVA absentee ballots transmitted, returned, cast, and counted; (b) Total number of UOCAVA absentee ballots not counted and the reason for rejection; (c) Total number of Federal Write-in Absentee Ballots returned and cast by UOCAVA voters; (d) Number of UOCAVA ballots transmitted as part of the two-election cycle of automatic requests; (e) Number of UOCAVA ballots transmitted as part of the two-election cycle of automatic requests that were returned undeliverable and submitted for counting.

Election Administration

(a) Total number of precincts in the state/jurisdiction; (b) Number of polling places available for voting in the November 2010 Federal general election; (c) Number of poll workers used for Election Day; (d) Extent to which jurisdictions had enough poll workers available for the general election.

Election Day Activities

(a) Total number of persons who voted in the 2010 Federal general

election; (b) The source of the participation number—poll books, ballots counted, vote history; (c) Total number of first-time voters who registered by mail and were required to provide identification in order to vote; (d) Number of voters who appeared on the permanent absentee voter registration list; (e) Number of absentee ballots requested, received, counted, and not counted; (f) Reasons for absentee ballot rejection; (g) Number of provisional ballots cast, counted, and rejected; (h) Reasons for provisional ballot rejection; (i) Use of electronic and printed poll books during the 2010 Federal general election; (j) Type and number of voting equipment used for the 2010 Federal general election; (k) Type of process in which voting equipment was used—precinct, absentee, early vote site, accessible to disabled voters, provisional voting; (l) Location in which votes were tallied—central location, precinct/polling place, or early vote site; (m) General comments regarding the jurisdiction's Election Day experiences.

2010 Election Results

Total number of votes cast—at polling places, via absentee ballot, at early vote centers, via provisional ballots.

Statutory Overview (2010 Federal General Election)

(a) Information on whether the state is exempt from the National Voter Registration Act (NVRA); (b) State definition of terms—over-vote, under-vote, blank ballot, void/spoiled ballot, provisional/challenged ballot; (c) State definition of inactive and active voter; (d) State provision for voter identification at registration, for in-person voting, and for mail-in or absentee voting; (e) information on legal citation for changes to election laws or procedures enacted or adopted since the previous Federal general election; (f) State definition of voter registration; (g) Process used for moving voters from active to inactive lists and from inactive to active; (h) State deadline for registration for the Federal general election; (i) Information of whether the state is an Election Day/Same Day Registration state; (j) Description of state voter registration database system—bottom-up or top-down; (k) State voter removal/confirmation notices processes; (l) Agency or department that is responsible for list maintenance; (m) Information on whether there are electronic links between the voter registrar's office and other state agencies; (n) State's use of National Change of Address (NCOA); (o) State's voting eligibility requirements as they relate to convicted felons; (p) Tabulation

of votes cast at a place other than the voter's precinct; (q) Provision for voting absentee; (r) State tracking of the date of all ballots cast before election day; (s) Provision for mail-in voting in place of at-the-precinct voting; (t) Acceptance or rejection of provisional ballots of voters registered in a different precinct; (u) State process for capturing over-votes and under-votes. States and territories that submitted a Statutory Overview for 2008 will be asked to provide updates to the information above, where applicable.

Needs and Uses: The EAC issues the survey to meet its obligations under the Help America Vote Act to serve as national clearinghouse and resource for the compilation of information with respect to the administration of Federal elections; to fulfill its data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal Elections. The Help America Vote Act of 2002 (HAVA) (42 U.S.C. 15322) requires the EAC to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal Elections. This includes the obligation to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, under the National Voter Registration Act (NVRA), the EAC is responsible for collecting information and reporting, biennially, to the United States Congress on the impact of that statute. The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations. States that respond to questions in this survey concerning voter registration related matters will meet their NVRA reporting requirements under 42 U.S.C. 1973gg-7 and EAC regulations. Finally, the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) mandates that EAC create a standardized format for state reporting of UOCAVA voting information (42 U.S.C. 1973ff-1). Additionally, UOCAVA requires that "not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the

election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public." States that complete and timely submit the UOCAVA section of the survey to the EAC will fulfill their UOCAVA reporting requirement under 42 U.S.C. 1973ff-1(c). In order to fulfill the above requirements, the EAC is seeking information relating to the period from the Federal general election day 2008 +1 through the November 2010 Federal general election.

Affected Public (Respondents): State governments, the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

Affected Public: State government.

Number of Respondents: 55.

Responses per Respondent: 1.

Estimated Burden per Response: 147 hours.

Estimated Total Annual Burden

Hours: 8,085 hours.

Frequency: Biennially.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9-21592 Filed 9-4-09; 8:45 am]

BILLING CODE 6820-KF-P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to the Help America Vote Act (HAVA), the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plans previously submitted by Maryland, Nebraska, and New Mexico.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202-566-3100 or 1-866-747-1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION:

On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the first revision to the State plan for New Mexico, and the second revision to the State plans for Maryland and Nebraska.

The revised State plans from Maryland, Nebraska, and New Mexico provide information on program accomplishments and address changes in the respective budgets to account for the use of Fiscal Year 2008 and 2009 requirements payments. In accordance with HAVA section 254(a)(12), all the State plans submitted for publication provide information on how the respective State succeeded in carrying out its previous State plan. The States all confirm that these changes to their respective State plans were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from September 8, 2009, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Officials

Ms. Linda Lamone, Administrator,
Maryland State Board of Elections,
151 West Street, Suite 200, Annapolis,
Maryland 21401-0486, *Phone:* (410)
269-2840.

The Honorable John Gale, Nebraska
Secretary of State, P.O. Box 94608;
State Capitol, Suite 2300; Lincoln,
Nebraska 68509-4608, *Phone:* (402)
471-2554, *Fax:* (402) 471-3237.

The Honorable Mary Herrera, New
Mexico Secretary of State, 3285 Don
Gaspar, Suite 300, Santa Fe, New
Mexico 87503, *Phone:* (505) 827-
3600, *Fax:* (505) 827-8081.

Thank you for your interest in improving the voting process in America.

Dated: August 31, 2009.

Thomas R. Wilkey,
Executive Director, U.S. Election Assistance
Commission.

BILLING CODE 6820-KF-P

INTRODUCTION BY THE GOVERNOR OF MARYLAND

STATE OF MARYLAND
OFFICE OF THE GOVERNOR



MARTIN O'MALLEY
GOVERNOR

STATE HOUSE
100 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1925
410-974-3901
TOLL FREE: 1-800-811-8336

TTY USERS CALL VIA MD RELAY

August 10, 2009

U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005

Dear Commissioners:

I am pleased to submit a revised Maryland State Plan that reflects the current state of election reform in the State of Maryland. This plan demonstrates how the State complies with the requirements of the federal Help America Vote Act of 2002 and the State's commitment to improvement in election administration.

The recent revisions to the State Plan reflect the State's movement towards statewide implementation of a paper-based, optical scan voting system for the 2010 elections and the possibility of full funding by the United States Congress. Although it is not known whether the U.S. Congress will fully fund the Help America Vote Act, the State of Maryland stands ready to implement additional improvements to election administration if the federal funds become available.

Lastly, I would like to thank the individuals who serve on the State Plan Committee and who reviewed and updated the State Plan. These individuals represent State and local election officials, county government officials, and advocates who have an interest in elections and are dedicated to improving election administration for Maryland's voters.

If you would like to learn more about elections in Maryland, please visit the State Board of Elections' website at www.elections.state.md.us or call 1-800-222-8683.

Sincerely,


Martin O'Malley
Governor

STATE PLAN REQUIRED ELEMENTS (HAVA §254)

1. Title III Requirements and Other Activities

How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections. -- HAVA §254 (a)(1)

1.A. §301(a), Voting Systems Standards Requirements

Deadline for Compliance: January 1, 2006; no waiver permitted.

When the initial State Plan was adopted, the State used four polling place voting systems in its 24 jurisdictions, including two optical scan systems (ES+S Optech III-P Eagle and Diebold Model ES-2000) and two Direct Recording Electronic (DRE) systems (Diebold AccuVote TS and Sequoia AVC Advantage). In addition, the State used four optical scan voting systems for absentee balloting (ES+S Optech III-P Eagle, ES+S Optech IV-C, ES+S Model 315, and Diebold Model ES-2000).

Before the passage of HAVA, the State enacted legislation mandating that, by 2006, all jurisdictions implement a uniform voting system for polling places and a uniform voting system for absentee voting. *See* Chapter 564 of the 2001 Acts of Maryland. SBE began to implement this new legislation in 2001. Because SBE closely tracked innovations in voting as well as the developing federal election reform legislation, the polling place voting system selected in 2001 was compliant with the HAVA requirements that were introduced a year later.

The voting system selected as the statewide voting system for polling place voting enables a voter to correct ballot errors before casting a ballot. The system also prevents a voter from over-voting, provides for accessibility for individuals with disabilities, and allows for alternative language accessibility.

In 2002, four of the State's 24 jurisdictions, comprising approximately 32% of its registered voters, implemented the uniform State and HAVA-compliant, DRE voting system (AccuVote TS) for polling place voting and the uniform State absentee voting equipment (Model ES-2000). For the 2004 elections, nineteen counties implemented the uniform State voting systems, and in 2006, the remaining jurisdiction - Baltimore City - implemented the system. By the January 1, 2006, deadline established by HAVA, all 24 jurisdictions had a HAVA-compliant voting system.

In 2007, legislation was enacted requiring that the State's voting system include a voter verifiable paper trail, comply with the Americans with Disabilities Act, and meet the accessibility standards adopted as part of the Voluntary Voting System Guidelines. *See* Chapters 547 and 548 of the 2007 Acts of Maryland. Because of how "voter verifiable paper trail" was defined, this law requires the implementation of an optical scan voting system for polling place voting. Since the State's current voting system does not meet the requirements of the Chapters 547 and 548, the State will be implementing a new voting system for polling place voting for the 2010 elections.

Because of the uncertainty about whether any voting systems currently on the market meet the requirements of Chapters 547 and 548 of the 2007 Legislative Session, legislation was enacted in the 2009 Legislative Session that permits the State to implement an optical scan voting system and use at least one DRE voting unit in each

polling place to accommodate voters with disabilities. See Chapter 428 of the 2009 Legislative Session. The DRE voting system can be used for polling place voting until a voting machine meets the accessibility requirements of Chapters 547 and 548 of the 2007 Legislative Session and State certification requirements and is compatible with the State's optical scan voting system for polling place voting.

In addition to numerous voting system requirements, §301(a) also requires states to define what constitutes a legal vote for each type of voting system used in the state. Prior to the passage of HAVA, the State defined, in the 2002 Standardized Election Recount Procedures for Optical Scan Automatically Tabulated Systems, what constitutes a legal vote in the case of a manual recount for optical scan ballots. Subsequently, the State defined a legal vote in a uniform manner for each voting system as a regulation in Title 33 of the Code of Maryland Regulations (COMAR).

Uniform State Voting Systems Program Milestones

As demonstrated in the above description of the current state of voting systems, the State is in compliance with HAVA §301(a) requirements. The State is currently in the procurement and planning stages of implementing the voting system required by Chapters 547 and 548 of the 2007 Legislative Session and Chapter 428 of the 2009 Legislative Session and will ensure that the selected voting system will be compliant with HAVA §301(a) requirements.

- 1) Planning voting system compliance
 - Assess procurement options
 - Establish user group of relevant internal stakeholders to discuss implementation, lessons learned from prior voting system implementations, and guide the voting system program through planning, managing, and implementing phases
 - Create schedules, milestones, and work plans
- 2) Managing the implementation effort through a standardized project management framework
 - Develop reporting structures and performance measures to track progress
 - Track issues and risks to ensure smooth transition to new uniform voting systems
- 3) Implementing compliant voting systems
 - Procure equipment and services pursuant to the State's procurement law
 - Deliver equipment and services to all 24 jurisdictions
 - Ensure proper training and change management for stakeholders using new uniform systems
- 4) Operating & Maintaining new uniform State voting systems
 - Maintain and improve voting system software
 - Maintain technical infrastructure for software

The matrix on the following pages outlines the HAVA §301(a) requirements and the "State of Maryland's Current Status" and the "State of Maryland's Status with the New Voting System" related to these requirements. As the matrix indicates, all 24 jurisdictions are currently compliant with HAVA and will continue to be compliant with the implementation of the optical scan voting system for the 2010 elections.

Requirement	State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
<p>SEC. 301. VOTING SYSTEMS STANDARDS</p> <p>(a) REQUIREMENTS- Each voting system used in an election for Federal office shall meet the following requirements</p> <p>(1) IN GENERAL-</p> <p>(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall</p>		
<p>(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;</p>	Meets.	Will meet. The voter will be able to verify his or her selections either on the review screen of the DRE voting unit or by reviewing the paper ballot.
<p>(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and</p>	Meets.	Will meet. On the DRE voting unit, the voter can change any selection or correct an error at any time before pressing the "cast ballot" button. A pollworker can issue a voter a replacement ballot if the voter using a paper ballot needs to change a selection or correct an error.
<p>(iii) if the voter selects votes for more than one candidate for a single office-- (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.</p>	Meets.	Will meet. The DRE voting unit prevents a voter from making more selections than permitted for that contest. The optical scan voting unit will return a ballot if one or more contests have more selections than permitted, and a pollworker will offer the voter another ballot.

Requirement	State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by		
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and	Meets.	Will meet. This information will be included in the voter education program to educate Maryland voters about the new voting system.
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)	Meets.	Will meet. This information will be included in the voter education program and on instructions on the ballot and in the polling place.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.	Meets.	Will meet. Notification on the DRE voting unit preserves the privacy of the voter and the confidentiality of the voter. For voters using the optical scan voting system, pollworkers will be instructed to provide notice in a manner that preserves the privacy of the voter and the confidentiality of the ballot.
(2) AUDIT CAPACITY-		
(A) IN GENERAL- The voting system shall produce a record with an audit capacity for such system.	Meets.	Will meet. Both systems meet this requirement.
(B) MANUAL AUDIT CAPACITY-		
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.	Meets.	Will meet. Both systems meet this requirement.
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.	Meets.	Will meet. Both systems meet this requirement.

Requirement	State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
<p>(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.</p>	<p>Meets.</p>	<p>Will meet. Both systems meet this requirement.</p>
<p>(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES- The voting system shall-</p> <p>(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;</p>	<p>Meets.</p>	<p>Will meet. The DRE voting unit meets these requirements. When a voting unit that meets the accessibility requirements of State law is available, the unit will also meet these requirements.</p>
<p>(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and</p>	<p>Meets.</p>	<p>Will meet. There will be at least one DRE voting unit in each polling place. When a voting unit that meets the accessibility requirements of State law is available, there will be at least one unit in each polling place.</p>
<p>(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).</p>	<p>N/A because the State's current voting system was purchased before January 1, 2007</p>	<p>N/A because the new voting system being implemented for the 2010 elections will not be purchased with federal funds. State and county funds will be used to purchase the new system.</p>
<p>(4) ALTERNATIVE LANGUAGE ACCESSIBILITY- The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).</p>	<p>Meets.</p>	<p>Will meet. The DRE voting unit is capable to providing bilingual ballots in those jurisdictions submit to the section 203 of the Voting Rights Act. Bilingual paper ballots will also be provided in those jurisdictions.</p>

Requirement	State of Maryland's Current Status (Meets Requirement, Partially Meets, Does Not Meet)	State of Maryland's Status with New Voting System (Will Meet Requirement, Will Partially Meet, Will Not Meet)
<p>(5) ERROR RATES- The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.</p>	<p>Meets.</p>	<p>Will meet. Both systems will meet this requirement.</p>
<p>(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE- Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.</p>	<p>Meets.</p>	<p>No action needed as current regulations already define what constitutes a vote on a DRE voting unit and on a paper ballot.</p>

6. Maryland's HAVA Budget

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on –

- (A) the costs of the activities required to be carried out to meet the requirements of title III;
- (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
- (C) the portion of the requirements payment, which will be used to carry out other activities. -- HAVA §254 (a)(6)

Table 6.1 outlines the federal funds authorized to the State for HAVA activities. These figures are the basis for the HAVA budget in Table 6.3.

Federal Fiscal Year	Total Federal Funds	Maryland Share	5% State Match Requirement*
Early Payments	\$650	\$7.27	n/a
2003	\$1,400	\$15.20	\$0.80
2004	\$1,000	\$27.28	\$1.44
2005	\$600	\$11.16	\$0.59
2008	\$115	\$2.08	\$0.11
2009	\$100	\$1.81	\$0.10
Total	\$3,865	\$64.80	\$3.04

HAVA originally authorized funding for three fiscal years (2003-2005). Because there was no appropriation in fiscal year 2005, the U.S. Congress appropriated funding in fiscal years 2008 and 2009 in an effort to move toward the full funding of HAVA. It is unlikely that Maryland will receive the full \$64.80 million shown in Table 6.1, as appropriations after fiscal year 2005 will not likely exceed the fiscal year 2005 appropriation for requirements payments. If HAVA is funded at the level established by HAVA, Maryland's share of the requirements payments would equal \$53.64 million or the Maryland's total share of all payments would equal \$60.91 million. The State's 5% match would be \$2.83 million.

Table 2 shows the amount of federal funds appropriated to Maryland for HAVA activities.

Federal Fiscal Year	Total Federal Funds	Maryland Share	5% State Match Requirement*
Early Payments	\$650	\$7.27	n/a
2003	\$830	\$15.20	\$0.80
2004	\$1,489	\$27.28	\$1.44
2005	\$0	\$0	\$0
2008	\$115	\$2.08	\$0.11
2009	\$100	\$1.81	\$0.10
Total	\$3,184	\$53.64	\$2.45

*5% State Match Requirement is calculated as 5% of the total of the State Match portion plus the federal requirements payment portion of cost. To determine the 5% State Match based on federal requirements payment amount, use .0526 as the multiplier (i.e., 5/95 ~ 0.0526). Example from Maryland FY 2003: \$15.20M x 0.0526 = \$0.8M

Based on the amount of federal funds appropriated, the State HAVA budget represents the activities to implement and conduct operations and maintenance for the HAVA Title III requirements and other activities to improve the administration of elections in Maryland. The budget will continue to be monitored and revised, when necessary, to reflect any material changes. The State's budget to carry out activities to meet HAVA requirements is provided in table 6.3.

Table 6.3: Maryland's Budget for HAVA Activities

HAVA Requirements	HAVA Funding Source (note 1)			
	§ 101 (note 2)	§ 102	§ 252	Total
TITLE III Requirements				
§ 301 Voting Systems (note 3)	\$1,000,000	\$1,637,609	\$31,150,865	\$33,788,474
§ 302 Provisional Voting & Voting Info Requirements	\$0	-	\$203,500	\$203,500
§ 303 Statewide Voter Registration List (note 4)	\$2,000,000	-	\$13,358,430	\$15,358,430
Other Election Reform Activities				
§ 254(3) Education: Voter, Election Officials, Pollworkers	\$1,675,000	-	\$0	\$1,675,000
§ 402 Administrative Complaint Procedures	\$5,000	-	\$0	\$5,000
Election Reform Program (note 5)	\$12,703,869	-		\$12,703,869
GRAND TOTAL HAVA	\$17,383,869	\$1,637,609	\$44,712,795	\$63,734,273

Notes:

1. Based on the amount of federal funding originally authorized in HAVA and the State's 5% state match. Maryland's share of the original authorizations is \$53.64 million. The amount of federal funds authorized by HAVA by fiscal year is provided in table 6.1.
2. On May 15, 2007, the State of Maryland certified that all of the Title III requirements had been met. As a result, the State can use all remaining and any future requirements payments to fund other activities to improve election administration. For the purposes of this budget, the requirements payments initially authorized for fiscal year 2005 and appropriated in subsequent fiscal years are shown in this column, since these funds - when received - can be used for any purpose authorized by § 101.
3. In 2001, Maryland implemented a HAVA-compliant statewide voting system in four counties. Included in the cost of the voting systems is \$13.8 M that the State already expended in those four counties for implementation and operation of the compliant voting system.
4. Section 101 funds allocated to the voter registration system include: (1) funds to develop an interface between the statewide voter registration system and the Maryland Motor Vehicle Administration (MVA) to decrease the number of individuals who have a transaction at MVA but whose information is not received by election officials; (2) develop and implement on-line voter registration; (3) develop and implement an interface between the statewide voter registration system and an in-house election management system to combine multiple polling place databases; and (4) other enhancements to the statewide voter registration system.
5. Projects included in the Election Reform Program include: (1) development, maintenance, and enhancements (including on-line delivery of absentee ballots) to voter-look-up on website; (2) enhanced election night reporting; (3) project management office, including personnel to conduct business process reviews and assist with training and corrective actions and election-related audits according to the pilot audit program developed by SBE with a grant from the Pew Charitable Trust's Make Voting Work Project; (4) data entry center to process voter registration applications submitted immediately prior to the voter registration deadline; (5) an absentee ballot tracking system; (6) salaries and associated benefits for personnel; and (7) expenditures concerning election-related equipment.

12. Changes to State Plan

In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year. -- HAVA §254 (a) (12)

The inaugural State Plan was amended in 2005 to reflect the actual amount of funds received to implement the requirements of HAVA and the actual costs of major contracts to comply with the Act. Amendments to the State Plan were made in Sections 6, 10, 12, and 13.

The State Plan amended in 2005 was amended again in 2009. The 2005 version was amended to reflect the amount of funds authorized under the HAVA and to reflect the anticipated implementation of a HAVA-compliant voting system (funded exclusively by State and county funds) for the 2010 elections. Amendments to the State Plan were made in Sections 1A, 6, 12, and 13.

Since the submission of the amended State Plan, the State of Maryland has:

1. Implemented a HAVA-compliant voting system in all 24 jurisdictions for the 2006 elections. Four jurisdictions implemented the system in 2002, nineteen counties implemented in 2004, and the remaining jurisdiction - Baltimore City - implemented the system by January 1, 2006.
2. Administered four statewide elections and seven special elections using the State regulations that define what constitutes a vote and what will be counted as a vote for each voting system used in Maryland. *See Code of Maryland Regulations 33.08.02.*
3. Continued provisional voting based on the standards required by HAVA and provided a "free access system" for each statewide election and five special elections. In the 2008 General Election, over 51,000 individuals voted by provisional ballot, and over 34,000 voters had their provisional ballots counted.
4. Printed, distributed, and mandated posting of voting information in every precinct in Maryland. This information included instructions on how to vote, identification requirements for certain voters, and general information about voting rights and federal and State laws prohibiting acts of fraud and misrepresentation.
5. Implemented by January 1, 2006, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level. The HAVA-compliant system has been successfully used in four statewide elections, seven special elections, and numerous municipal elections. Enhancements and modifications continue to improve its usability.
6. Reviewed regulations requiring first-time voters who registered to vote by mail to satisfy the identification requirement established by HAVA. *See Code of Maryland Regulations 33.07.06.*
7. Updated and distributed State's pollworkers' manual, initially developed by a professional graphic design firm. The manual incorporates graphic design principles that foster learning by adults. The new manual was initially used in the 2006 elections and was updated for use in the 2008 elections. Other forms were also redesigned, using the same principles.

8. Developed and distributed a statewide pollworkers' training curriculum and instructor's guide for use in all jurisdictions for the 2006 and 2008 elections. The State conducted train-the-trainer sessions for the individuals who conduct pollworkers' training for the local boards of elections.
9. Reviewed and proposed amendments to the regulations establishing a State-based administrative complaint procedure. *See* Code of Maryland Regulations 33.01.05. After conducting several hearings under this procedure, several shortcomings in the regulations were identified, and the amendments addressed these shortcomings. The amendments included:
 - a. Expanding the window (from 10 days to 20 days) during which a hearing must be conducted;
 - b. Limiting witnesses to those individuals called by either the complainant or respondent;
 - c. Requiring parties to provide the hearing officer and other party a list of the witnesses each party intends to call and documents or other evidence the parties intend to present at the hearing;
 - d. Permitting the hearing officer to question witnesses and, with the consent of all parties, extend any deadline or waive or modify any requirement not specified by law;
 - e. Clarifying that a determination is not provided at the end of the hearing; and
 - f. Permitting the hearing officer to take judicial notice of certain facts.

These amendments were adopted under the State's Administrative Procedures Act and were effective as of March 9, 2009.

13. State Plan Development and Committee

A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section 255 and section 256. -- HAVA §254 (a)(13)

The State's committee consists of individuals representing a cross-section of election stakeholders. The State Plan Committee was selected by the chief State election official, Linda Lamone, State Administrator for SBE.

The original Members of the State Plan Committee, and the primary qualification of each for being a committee member, are as follows:

- Linda Lamone, State Administrator, State Board of Elections;
- William E. Anderson, Department of Aging ADA Coordinator, Anne Arundel County;
- Jacqueline McDaniel, Baltimore County Election Director;
- Margaret Jurgensen, Montgomery County Election Director;
- Robin Downs Colbert, Prince George's County Election Director;
- Linda Pierson, League of Women Voters;
- Michael Sanderson, representative of Maryland Association of Counties (MACo);
- James McCarthy, representative of National Federation of the Blind; and
- Kibbe Turner, Registered Voter.

In creating the State Plan, the State Plan Committee worked with Accenture, a project management vendor. The vendor was contracted to facilitate working sessions and to offer a fair and balanced assessment regarding the impact of HAVA requirements and proposed compliance steps. Based on an objective analysis of the State's current status, this State Plan highlights necessary adjustments and potential next steps in Maryland's election reform process.

The State Plan Committee will comply with the requirements of §255 and §256 of HAVA.

The Preliminary State Plan was published on the Maryland State Board of Elections' website, following a public notice in the Maryland Register. The Preliminary Plan was available for 30 days of public comment, as required by HAVA. The State Plan submitted to the Election Assistance Commission for publication in the Federal Register incorporated the feedback from the 30-day period. The State Plan was published in the Federal Register on March 24, 2004, for a 45-day public comment period.

The State Plan Committee reconvened in October 2005 to review the State's HAVA activities and revise the HAVA budget to reflect the federal funds received and the known costs of implementing HAVA activities. Notice of the revisions and the opportunity for public comment was published in Volume 32, Issue 25 of the *Maryland Register* (December 9, 2005). Public comment was received and considered by the State Plan Committee, and the revised State Plan was submitted to the U.S. Election Assistance Commission on January 26, 2006, for publication in the *Federal Register*. Notice of the revised State Plan was published in Volume 71, No. 38 of the *Federal Register* (February 27, 2006). The revised State Plan became effective March 30, 2006.

The membership of the State Plan Committee was updated to reflect change in personnel at two local boards of elections, removal of a member who moved out of state, and removal of another member who no longer serves in his prior capacity. The members of the State Plan Committee that reviewed the 2009 revisions to the State Plan are:

- Linda Lamone, State Administrator, State Board of Elections;
- Tracy Dickerson, Charles County Election Director;
- Margaret Jurgensen, Montgomery County Election Director;
- Alisha Alexander, Prince George's County Election Director;
- Linda Pierson, League of Women Voters;
- Michael Sanderson, representative of Maryland Association of Counties (MACo);
and
- James McCarthy, representative of National Federation of the Blind.

The State Plan Committee reconvened to review the State's HAVA activities and update the State Plan to reflect the federal funds appropriated and the anticipated implementation of a HAVA-compliant voting system (funded exclusively by State and county funds). Notice of the revisions and the opportunity for public comment was published in Volume 36, Issue 13 (June 19, 2009) and Volume 36, Issue 14 (July 6, 2009) of the *Maryland Register*. No public comment was received. The revised sections of the State Plan were submitted to the U.S. Election Assistance Commission on August 25, 2009, for publication in the *Federal Register*.

Help America Vote Act

John A. Gale
Secretary of State

State of Nebraska
Amended State Plan

July 1, 2009

John A. Gale
Secretary of State
State of Nebraska

Help America Vote Act of 2002 (HAVA)
State Plan (with 2009 Amendments)

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John A. Gale
Secretary of State
State of Nebraska

Help America Vote Act of 2002 (HAVA)
State Plan (with 2009 Amendments)

A Message from Secretary of State John Gale

In October of 2002, Congress passed and President George Bush signed the Help America Vote Act. This Act was the beginning point in a new era of election administration in the United States.

The Act is uniquely American: it contains federal mandates to the states, but it doesn't federalize the system; it provides funding to the states, but the funding is not entirely just federal money due to the match requirement; the Act requires reporting and accounting but generally relies on the State Election Officers to carry out the goals of the Act in cooperation with local authorities.

In February 2003, the U.S. Congress in its Omnibus Appropriations bill included some \$1.5 billion to begin funding the reforms mandated under HAVA. In order to access its share, each State created a State Plan Commission, which was to be broad-based, inclusive, and provided a voice for the various groups of citizens who expressed concerns that their communities had not been well served. Individuals from the visually impaired and physically handicapped communities particularly come to mind.

This has truly been an historic task. For the past century, the battle that has been fought has been over the issue of *who* shall vote. When our nation was founded, only white male adult landowners could vote. We have come a long way. The struggles to outlaw slavery and enfranchise blacks as citizens, to allow women to vote, and to reduce the voting age to 18 to give our youth a voice in their democracy, were tremendous struggles, finally leading to the Voting Rights Act of 1965, and the Civil Rights Act of 1974.

They were battles over inclusiveness in our democracy.

In 2001, the struggle shifted to issues of the fairness of the election system and the machinery of elections...the process of registering voters, casting ballots, and counting votes. What each State Commission did to implement HAVA became historic and a part of the dynamic of changing the face of elections in America.

For the first time in 100 years, we had an opportunity to review and make significant improvements in our election systems. It was time to invest some money where our ballot boxes are. These federal dollars helped strengthen our elections process by improving access at the polls,

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increasing our technology levels, and helping us educate and train voters and poll workers alike.

The responsibility placed by the Federal government onto state election officials has been taken very seriously. The U.S. Congress allocated unprecedented levels of funding to improve the machinery of elections nationwide, in order to accomplish a new level of fairness, reliability and inclusiveness, nearly uniform across the country. I approached this task as a clear mission delegated to my office, which we would not fail. We used the funds wisely and met the goals squarely. A new form of relationship between state and local election officials was paired with a new level of cooperation that maintained the fair and uniform election process that Nebraska has developed while effectively and efficiently developing processes to encourage every eligible citizen to participate in our system of democracy.

The first step on this journey was the appointment of the State Plan Commission members. I convey my warmest thanks to those members who have participated in the process. The long days and numerous hours spent discussing the intricacies of election administration have been invaluable in the preparation of this Plan and its amendments. I would be remiss if I did not acknowledge the efforts of Ms. Martha Gadberry, who as facilitator of the Commission meetings, has been successful in getting the group to function not only as advocates for their particular constituency, but as a team working together to improve the election process.

The original Plan was intended to be treated as a living document. It served as a changing road map to track not only the successes but also the failed initiatives along the way. To that end, everyone's input was welcomed, not only during the 30- day comment period mandated by the Act, but at any time that this path has been traveled. Please don't hesitate to contact my office with comments, suggestions or criticisms. Help us to make our democratic system be the best it can be to serve America.

With Best Wishes,

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Executive Summary

The Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 ("HAVA") following passage by the U.S. Congress was signed into law by the President of the United States George Bush on October 29, 2002. This legislation marked a significant step toward major change in our election systems nationwide. Each participating state is required to appoint a citizen advisory committee to advise the Chief Election Officer in the development of a State Plan to implement HAVA, which Plan is to be available for public comment and input before adoption.

Secretary of State John A. Gale, Chief Election Officer for the State of Nebraska, appointed a sixteen-member citizen advisory commission on February 28, 2003, to help in the development of the State Plan. The Commission is called the Nebraska State Plan Commission. Members include the election officials from Nebraska's two largest counties, a mid-size county election official, a former President of the Nebraska County Clerks Association, a representative from the Secretary of State's office and representatives from various advocacy organizations including the disabled community. Secretary Gale took recommendations for these appointments so that the Commission is representative of a wide cross-section of Nebraskans, including those with disabilities and minority designation.

In addition to the role played by Secretary of State Gale and the State Plan Commission, the public has an opportunity for input in the process. In accordance with the Act, there will be a 30 day comment period, and those comments will be considered prior to publication of the plan-- or any amendments to the plan-- in the Federal Register. Written comments may be submitted either through the web site www.sos.state.ne.us/election/HAVA, which contains details of Nebraska's efforts under the Help America Vote Act or by writing to the Secretary of State.

The State Plan has as its' foundation several basic principles that were adhered to in the drafting. These principles include:

Nebraska's Plan should comply with all federal requirements in the Help America Vote Act of 2002 (HAVA).

The plan should not pass initial costs of the implementation of HAVA onto the counties.

Allocation of adequate funds to purchase equipment to implement the central voter registration system, disability voting requirements, and training mandates should be the primary objectives.

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The State Plan was amended in 2004 to take into account additional Title III (Requirements Payments) appropriated by Congress. These changes were minor in nature and were described in Section 12. With the appropriation of additional funds in FY 08 and 09, additional amendments are necessary. In addition, because of the passage of time and to indicate progress or completion of various provisions, these amendments are more numerous. While a summary is included in Section 12, many sections have changes; some minor such as tense changes, others more substantive.

The State Plan consists of 13 sections on topics ranging from voter education and outreach to administration and budgeting for the plan. Section 1 describes the use of the Title II funding for the mandates in the Act. Included are descriptions of the mandates contained in Title III such as a centralized voter registration database, provisional voting, voter identification, and changes to the voter registration process. Several of these, provisional voting, voter identification and voter registration form changes, were addressed through state legislation during the 2003 legislative session.

Section 2 addresses how the funding will be distributed to local election officials or others. The proposal in this section calls for a grant program for voter education and outreach efforts. Section 3 addresses the issues surrounding voter and election official education and training. Notable components of this section include creation of a panel to examine voter turnout issues, an increased role for the Secretary of State's office in training local officials, and a more aggressive approach to ensuring that voters with disabilities are accommodated.

Section 4 outlines the requirements for vote tabulation equipment. The section outlines a plan to place a disabled accessible device in each polling site, while maintaining the current central scan and hand count procedures historically used in Nebraska. These processes, coupled with an education effort, may be used to address second chance voting issues; however, federal appropriations in 2004 have allowed for consideration of the use of precinct scan technology, allowing for the creation of a statewide system of optical scan counting through the use of precinct and central scan equipment.

Section 5 describes the fund established to administer the program funding and Section 6 provides a general budget for the implementation effort. Section 7 addresses maintenance of effort requirements of the Act.

Section 8 describes performance measures for the various elements of the State Plan. Section 9 provides a description of the Administrative Complaint Procedure required by the Act.

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Section 10 addresses the Title I or "early out" money and its uses. The current Plan anticipates using those funds to supplement the Title II funding to meet the mandates of the Act.

Section 11 addresses the State Plan Commission and how the Plan will be amended in the future. Section 12 contains a description of the changes to the State Plan in this amendment. Section 13 lists the members of the State Plan Commission and their procedures used to develop recommendations for this Plan.

This amended document will be made available for public comment for a thirty day period beginning on June 26, 2009. Any person wishing to comment on the plan may either write the Secretary of State at Suite 2300, State Capitol, Lincoln, Nebraska 68509. Comments may also be made on the website, www.sos.state.ne.us/election/HAVA.

Following the 30 day comment period, any comments will be reviewed and a final version of the State Plan be published in the Federal Register for a 45 day period in late July of 2009.

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Introduction

The following constitutes the 2009 revised State Plan for the implementation of the Help America Vote Act for the State of Nebraska. The federal statute requires addressing thirteen issues within the plan. Each required item is identified by a separate section.

Sec 254. (a) IN GENERAL - The State plan shall contain a description of each of the following:

Section 1

- (1) How the State will use the requirements payment to meet the requirements of title III (equipment and administration), and, if applicable under section 251 (a)(2), to carry out other activities to improve the administration of elections.**

It is currently estimated that the requirements payment (Title II) to the State of Nebraska will be approximately \$4.9 million for federal fiscal year 2003. In addition, Nebraska anticipates an additional \$8.8 million for federal fiscal year 2004. At this time it appears necessary that the entire amount of the requirements payment will be dedicated to two of the more expensive mandates contained in Title III: the interactive Voter Registration System (Section 303) and providing a Voting System within each polling site that allows members of the disability community to vote in private and unassisted (Section 301(a)(3)). It is also anticipated that at least a portion Title I funds will be necessary to meet these two requirements.

FY 08 and 09 requirement payments total approximately \$1.3 million.

The requirements of Title III include the following:

Sec. 301 This section describes the requirements for voting systems used at the polling sites. Details of these requirements are contained in below in Section 4.

Sec. 302 This section describes the requirements for what has been termed provisional voting and other voting information.

Through the 2002 election cycle Nebraska statute (Neb. Rev. Stat. 32-914.01 et seq.) provided for a process where a person who had previously registered to vote, but whose name did not appear on the list of eligible voters, could cast a

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ballot through either the use of a "conditional ballot" used to accommodate fail-safe voting under NVRA, or a provisional ballot for someone who had not changed their residence but for some reason their name did not appear on the list.

These provisions did not completely meet the requirements of Sec. 302, as there were no provisions for allowing the individual to ascertain the disposition of the conditional or provisional ballot.

LB 358, introduced and passed in 2003, combines the conditional and provisional processes into one procedure and provides for the development of a website and toll free line to determine whether the provisional ballot was counted and if not, why. This website and toll free line were set up and operational for the May 11, 2004 primary election.

LB 358 also contains requirements that voter information be posted in each polling location including information on polling hours, instructions on how to vote, voting rights, instructions for certain voters that are required to provide identification, and sample ballots. While some of this information had been required to be posted previously, the provisions of LB 358 meet the requirements of Sec. 302. The required voter information was first posted at the May 11, 2004 primary election and has been used at each subsequent election.

Sec. 303 This section describes the requirements for a statewide interactive voter registration database. Among the requirements are that the system utilize driver's license numbers and the last four digits of the social security number or in the alternative assign a unique identifier. Other requirements include coordination with other state agency databases and list maintenance procedures as outlined in the National Voter Registration Act.

While Nebraska had a state voter registration database in place, it did not meet the requirements contained in Sec. 303. The state explored either the modification of the current system or a replacement system that meets the requirements. A Request for Proposals was issued in February of 2004 and an agreement for a compliant system was entered into in June of 2004. The agreement calls for the completion of the system in October of 2005. A substantial amount of Title II monies currently estimated at \$4.5 million will be necessary to meet this mandate. See Section 6 (budget information) for additional detail. The deadline for meeting this requirement is January 1, 2004, although a waiver until January 1, 2006 was available and was applied for.

Sec. 303 further requires that various changes be made to the voter registration process including the design of the voter registration form and the confirmation of the last four digits of the social security number. In addition, agreements with the Department of Motor Vehicles and other state databases are required to provide for list maintenance purposes. LB 359, passed and signed during the 2003

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legislative session, contained the required changes and mandates the agreements with other state agencies. New voter registration forms were available in September of 2003. Agreements with the Department of Motor Vehicles, the Bureau of Vital Statistics (death notices) and agencies for felony convictions have been developed.

The section also provides that first time voters, who register by mail, are required to produce identification prior to casting a ballot. This mandate was also met in LB 359 and was implemented for the May 2004 primary and subsequent elections.

Section 2

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of -

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

Should funds be available after meeting voting and registration system mandates, the Secretary of State should develop a grant program to encourage voter participation and education among population groups that historically have not been participating in the voting process, including but not limited to youth, disabled persons and minority populations. Such grants should be limited to non governmental, not for profit organizations serving affected voters. No individual grant should exceed \$60,000 per year and preference should be given to organizations that demonstrate an ability to attract other financial resources to maintain programs into the future.

This section has resulted in 3 grants being awarded (1 in the '06 cycle and 2 in the '08 cycle). Grants may continue in future cycles if funding is available.

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

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Any entity receiving grant monies under (2)(A) will comply with any or all federal reporting requirements. Any entity receiving grant monies under (2)(A) has been required to submit a report to the Secretary of State within 12 months after receiving such a grant, that details the activities funded by the grant and a financial audit.

Section 3

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

The Secretary of State's Office understands the importance of education and training to a successful implementation of HAVA reforms in Nebraska.

The Secretary of State will initiate and plan for centralized, uniform training statewide. This may include but is not limited to providing election officials the training standards, including maintenance of current training efforts; a training manual (both electronic and hard copy) regarding the HAVA requirements; a video with basic information about HAVA to inform county clerks and poll workers; and information about increasing diversity of poll workers and election officials. This will be done by using regional networks for training election officials, such as NACO annual meetings and involving the vendor to provide training on specific election equipment. The Secretary of State's Office will also seek opportunities to collaborate with advocacy and community groups in an effort to inform not only election officials, but the general public as well regarding voter accessibility and procedural changes. This includes but is not limited to the grant program described in Section 2.

Currently, elections and election training are handled mainly at the local level. Training on election issues is provided twice yearly to the County Clerks by the Secretary of State's Office. County officials will continue to bear responsibilities to disseminate training materials and conduct training events within the counties to their poll workers. Content of the training will include, but not be limited to, accessibility issues (especially for the physically and visually impaired); identification requirements for certain first time voters as described in HAVA; changes to provisional voting for HAVA compliance; and information on the complaint procedure.

Voters with disabilities should be made aware of the new accessibility requirements and instructed on how to use any new electronic voting equipment. The Secretary of State's office will do this in a variety of ways, which may include but will not be limited to, producing a Braille brochure for statewide distribution; making new electronic voting equipment available in places where people with disabilities or the elderly can get hands-on experience; showing new electronic voting equipment in higher education student unions, high schools and nursing homes and assisted-living facilities; coordinating voter education projects with

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advocacy and community groups; educating the media through press releases, public access and service announcements; producing video or power point presentations for use by advocacy groups for civic group meetings; improving signage at the polling place to indicate accessibility; and establishing an "Elections Information" website to inform the voters of changes before statewide elections.

County clerks will provide information to the voters regarding the identification requirements for first time voters who register by mail. When students are on college campuses, information on voting place options may be given during orientation activities. College students may also be recruited as poll workers, along with high school students, pursuant to new statutory allowances passed by the Nebraska Legislature.

Training for Election Officials and their staff continues to be an ongoing effort. An annual large group workshop concentrates on federal and state legislative changes, updates to the statewide voter registration database system, reviews on the vote tabulation equipment and new developments in poll worker training. In addition, small group meetings are held regionally across the state to promote open discussion on local problems and concerns. High School poll worker programs and website distribution of outreach materials continues to grow every year. Voting information pamphlets are provided both on-line, in office and distributed to county offices around the state.

The Secretary of State is committed to making voting more attractive and accessible to Nebraska's citizens. Registration forms will be revised to ensure compliance with HAVA reforms and user-friendliness to encourage voter registration. These forms will continue to be distributed in many places, such as the phone book, county clerk visits to high schools, and college voter drives. The Secretary of State will also focus on improving the process of reporting registrations from collaborating agencies, such as Health and Human Services.

Pursuant to LB 569, Nebraska established a Blue Ribbon Panel to monitor the progress of HAVA election reforms. The Vote Nebraska Initiative began meeting in July of 2003 with a report issued in December of 2004.

The Vote Nebraska Initiative report was available on the Secretary of State's website through the 2006 election cycle. At this time, copies may be obtained by contacting the Secretary of State's office.

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Section 4

- (4) **How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.**

The requirements of section 301 include the following:

Sec. 301 Voting Systems Standards

(a)(1)(A)(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

Prior to HAVA Nebraska local jurisdictions used one of two methods for tabulating votes: hand counting of paper ballots or a central optical scan system for paper ballots. Either of these two systems met the requirement that permits the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted.

With the selection of the Automark as the platform for accessible voting and the additional funds made available in FY 04, new optical scan units, both precinct level and central were purchased for all counties in FY 06. Both types of equipment permit the voter to verify selections prior to casting the ballot.

(a)(1)(A)(ii) provide the voter with the opportunity to (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was other wise unable to change the ballot or correct any error); and

The voting systems in use prior to HAVA met this requirement. Neb. Rev. Stat. 32-917 allowed a voter to receive a replacement ballot should the ballot be spoiled or an error occur.

The statutory provisions still allow a voter to receive a replacement ballot should the ballot be spoiled or an error occur.

(a)(1)(A)(iii) if the voter selects more than 1 candidate for a single office—

(l) notify the voter that the voter has selected more than 1 candidate for a single office on the ballot;

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(II) notify the voter before the ballot is cast and counted of the effect of casting multiple for the office;

The current vote tabulation systems currently used by Nebraska jurisdictions do not meet this requirement. Potential solutions to meeting this requirement (other than the provisions of (B)) would require the use of precinct level optical scanners or the expanded use of new electronic voting equipment at the polling sites. However, at this time the cost of such equipment on a statewide basis would require a disregard for one of the basic tenets of this plan: that costs not be passed onto the local jurisdictions. It is recommended that the current systems in use in the local jurisdictions continue to be used under the provisions of (B), but that this issue be revisited as continued federal funding of the Act becomes clearer.

Since 2004, new optical scan equipment has been purchased by the state for all counties. Precinct based optical scan units, which meet the requirements of subparagraph (A)(iii), were provided to 37 (of 93) counties.

(a)(1)(B) A state or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central county voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by—

- (i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for and office; and**
- (ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)**

The initial federal funding level was insufficient to completely replace the paper ballot and central optical scan systems in use at the time HAVA was adopted. A voter education program was developed to meet the requirements of this subsection. The Secretary of State developed materials that are provided to each voter. Additional notices are posted within the polling site and assistance will be provided if requested.

New central scan units were provided to the remaining 57 counties (Adams Co. received both). As the central scan units are not capable of meeting the provisions of subparagraph (A)(iii), self education materials as outlined in subparagraph (B), have been made available in each polling booth as well as on privacy sleeves and other locations within the polling site.

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(a)(1)(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

Voter education developed under this subsection (B) provided instructions and other information to each individual voter so that they may review the information in private and cast their ballot appropriately.

Should funding become available and it is feasible to provide all counties with a precinct level optical scan system, such a system provides a mechanism to preserve the privacy of the voter.

Both the automated notification with precinct based units and the self education materials provided for central scan units preserve the privacy of the voter and confidentiality of the ballot.

(a)(2) Audit Capacity

(A) The voting system shall produce a record with an audit capacity for such system.

The voting systems in place in Nebraska in 2003 (hand count and central optical scan) met this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

(a)(2)(B) Manual Audit Capacity

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

The voting systems that were in place in Nebraska (hand count and central optical scan) meet this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

The systems provided to the counties (precinct and central scan) utilize a paper ballot that can be used in a manual audit. Such an audit (1% of precincts) was conducted after the '08 election cycle.

(a)(2)(B)(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

The voting systems in place in Nebraska at the inception of HAVA (hand count and central optical scan) met this requirement. Current state

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statute (32-917) allows a voter to receive a new ballot for any corrections that are necessary. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

(a)(2)(B)(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

The voting systems currently in use in Nebraska (hand count and central optical scan) meet this requirement. Any future equipment purchases to comply with (a)(1)(A)(iii) or (a)(3) shall meet the requirements of this section.

The systems provided to the counties (precinct and central scan) utilize a paper ballot that can be used in a recount. Several recounts have been conducted since the systems have been installed.

**(a)(3) The voting system shall
(a)(3)(A) be accessible for individuals with disabilities, including nonvisusal accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for others;**

The voting systems in place in Nebraska prior to HAVA (hand count and central optical scan) did not meet this requirement. The Secretary of State purchased equipment for use by the counties that meet the requirements of this section.

To meet this requirement, sufficient Automark voting units were purchased for distribution of one unit for each polling site. The Automark units meet the requirements of (a)(3).

(a)(3)(B) satisfy the requirement of subparagraph (A) through the use of 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

The voting systems in place in Nebraska (hand count and central optical scan) did not meet this requirement. The Secretary of State purchased enough units to allow the placement of at least one piece of accessible voting equipment in each precinct. The Secretary of State may recommend the consolidation of polling sites, not only for the purposes of this section but also to ensure that all polling sites are accessible.

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(a)(3)(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting systems standards for disability access (as outlined in this paragraph).

Any equipment purchased, either by the counties or by the State, after January 1, 2007 shall meet the disability standards as outlined in (A).

To date, no additional voting systems have been purchased after January 1, 2007.

(a)(4) The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights of 1965 (42 U.S.C. 1973aa-1a).

Following the 2000 Census, two Nebraska jurisdictions were required to provide alternative language accessibility. Colfax County is required to provide materials in Spanish and Sheridan County is required to provide assistance in Lakota Sioux. The voting systems in place in Nebraska prior to HAVA were capable of meeting the language accessibility requirements. Systems purchased with Title II funds (Automark, precinct optical scan and central optical scan purchased by the state are capable of meeting not only the current required languages, but such additional languages as may be necessary in the future.

(a)(5) The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate established under 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

The voting systems previously in place in Nebraska meet this requirement. Equipment purchased (Automark, precinct optical scan and central optical scan) have been certified to applicable FEC/EAC standards. Any future purchases of vote tabulation equipment whether by the state or local jurisdictions should not only meet the error rate standards but any additional standards issued by the Election Administration Commission.

(a)(6) Each state shall adopt uniform and nondiscriminatory standards that define what constitutes a vote...

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Nebraska statute (32-901) defines a valid vote for each of the systems currently in use in Nebraska. The statute was amended through LB 358 to define a valid vote for the voting equipment placed at each polling site pursuant to (a)(3)(B).

Section 5

(5) How the State will establish a fund described in subsection (b) (Elections Fund) for purposes of administering the State's activities under this part, including information on fund management.

Legislative Bill 14, signed into law on February 20, 2003, created the Election Administration Fund. The Election Administration Fund consists of federal funds, state funds, interest, gifts, and grants appropriated for the administration of elections. The Secretary of State uses the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration by mail, training or informational materials for election officials and for the general public related to elections, and any other costs related to elections or to implementation of the Help America Vote Act. Any money in the fund available for investment has been invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Since the creation of the fund, several business units have been created to more accurately distinguish between Title I, Title II, State Matches, and interest earned on the components of the fund.

Section 6

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on -

- (A) the costs of the activities required to be carried out to meet the requirements of title III;*
- (B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and*
- (C) the portion of the requirements payment which will be used to carry out other activities.*

*Anticipated Revenue

*These numbers are based on actual receipts, appropriated amounts and estimates based on currently proposed funding levels. **Fiscal years are based on state fiscal years that run from July 1 to June 30.** While proposed funding

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levels are below authorization levels in HAVA, this budget is based on conservative estimates.

The table below provides anticipated revenues from FY 08 and 09 federal appropriations as well as the required state match. The Fiscal Year reflects the state fiscal year that it is anticipated funds will be received.

	Fiscal Year 2003	Fiscal Year 2004	Fiscal Year 2005	Fiscal Year 2006
Title I Funding	\$5,000,000	\$0	\$0	\$0
Title II		\$4,920,000	\$8,829,000	\$0
State Match	\$260,000	\$465,000	\$0	\$0
Subtotal	\$5,260,000	\$6,385,000	\$8,829,000	\$0
*Other State Funding	\$241,000	\$240,000	\$238,000	\$238,000
Total	\$5,501,000	\$6,625,376	\$9,067,173	\$238,000

	Fiscal Year 2007	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010
Title I Funding	\$0	\$0	\$0	\$0
Title II	0	\$0	\$0	\$1,271,485
State Match	\$0	\$0	\$35,795	\$31,126
Subtotal	\$0	\$0	\$35,795	\$1,302,611
*Other State Funding	\$241,000	\$240,000	\$238,000	\$238,000
Total	\$241,000	\$240,000	\$273,795	\$1,540,611

*This amount (Other State Funding) is similar to previous appropriations for election administration. FY'99-'00 expenditures for election administration totaled \$138,905. Maintenance of effort requirements in section 7 require a state to maintain the level of expenditures made for the purposes of the requirements payments. As the bulk of the requirements were not addressed or met by the state prior to HAVA, it is believed that

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no state funds were expended in FY'99-'00 that meet the requirements of section 7. The category is included to show that the state has maintained the historical level of election administration funding. See Section 7 of this plan for further information.

Title III Requirements	Fiscal Year 2003 (actual)	Fiscal Year 2004 (actual)	Fiscal Year 2005(actual)	Fiscal Year 2006(actual)
Disability Equipment (Section 301)	\$0	\$58,000	\$79,000	\$10,420,000
Central VR (Section 303)	\$30,000	\$173,000	\$1,470,000	\$1,480,000
Training and Ed. (Sec. 302, 303)	\$4,000	\$34,000	\$19,000	\$86,000
Administration (State Plan Committee, staffing, overhead)	\$40,000	\$205,000	\$208,400	\$243,000
Total	\$74,000	\$470,000	\$1,776,400	\$12,229,000

Fiscal Year 2007 (actual)	Fiscal Year 2008 (actual)	Fiscal Year 2009 (est.)	Fiscal Year 2010 (est.)	Fiscal Year 2011 (est.)	Fiscal Year 2012 (est.)
\$237,000	1,045,000	605,000	\$525,000	\$370,000	\$370,000
\$443,000	\$135,000	\$1,290,000	\$475,000	\$475,000	\$500,000
\$5,700	\$108,000	\$4,000	\$125,000	\$6,000	\$125,000
\$225,000	\$208,000	\$210,000	\$210,000	\$210,000	\$210,000
\$910,700	\$1,496,000	\$2,109,000	\$1,335,000	\$1,061,000	\$1,205,000

John A. Gale
Secretary of State
State of Nebraska

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Section 7

- (7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.**

For Fiscal Year '99-'00, total state expenditures for elections were \$138,905. While none of these funds were used for activities specifically mandated by Title III of the Act, it should be noted that appropriations for Fiscal Years '03-'04 and '04-'05 (LB 407, 2003) for elections (Agency 09, Program 45) were approximately \$240,000 for each of the two fiscal years. This amount is an increase over total election expenditures for FY '99-'00.

The amended table in Section 6 (under "Other State Funding") reflects non HAVA expenditures for FY 06-09. Each years expenditures are in excess of total election expenditures for FY 99-00.

Section 8

- (8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.**

The Secretary of State's office is responsible for the success of HAVA implementation and the meeting of performance goals. Local election officials also play a vital role in keeping information current and monitoring performance goals. The performance goals and specific instructions will be included in the elections manual. The counties will report their success with the HAVA implementation to the Secretary of State's Office, and the Secretary of State's Office will make these results available to the public.

Performance Goal 1: Central Voter Registration Database

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This database will fully comply with the HAVA guidelines. It will be interactive between the counties and the Secretary of State's Office and will be compatible for updates with the Department of Motor Vehicles and Vital Statistics.

Performance Goal	Central Voter Registration Database
Timetable	303a to be implemented by January 1, 2006 303b to be implemented by January 1, 2004
Criteria used to measure performance	Compliance with HAVA requirements
Officials monitoring goal	Secretary of State, Deputy Secretary for Elections and Elections staff
Update as of 5/2004	Provisions of 303b (ID for mail in registrants) implemented for May 2004 election.
Update as of 5/2009	Project complete and in maintenance mode.

Performance Goal 2: Voter Accessibility

Improving voter accessibility, as required by HAVA, shall include accessibility for individuals with visual and physical impairment and with alternative language issues as determined by Title III, Section 301.

Performance Goal	Improving Voter Accessibility
Timetable	Implemented by January 1, 2006
Criteria used to measure performance	Compliance with HAVA requirements
Officials monitoring goal	Secretary of State, Deputy Secretary for Elections and Elections staff
Update as of 5/2004	Ongoing project. Counties have surveyed sites to determine deficiencies and in some cases consolidated sites.
Update as of 5/2009	Ongoing project. Counties have made improvements utilizing HHS grant funds. Independent surveys of each site completed in 2008.

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Performance Goal 3: Provisional Ballots

The Secretary of State will set uniform procedures for provisional ballots to be in compliance with HAVA requirements. This procedure will be included in the elections manual.

Performance Goal	Provisional Ballots
Timetable	Implemented by January 1, 2004
Criteria used to measure performance	Compliance with HAVA provisions
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and Elections staff and local election officials
Update as of 5/2004	Provisional ballot system in place for May 2004 election

Performance Goal 4: Voter Education

The Secretary of State's Office is committed to educating the voter regarding changes in election law and plans to implement the ideas expressed in section 3 of the State Plan.

Performance Goal	Voter Education
Timetable	Ongoing implementation to be completed January 1, 2006
Criteria used to measure performance	Compliance with measure described in elections manual. County officials will report any problems to the Secretary of State's Office.
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff and County Election Officials.
Update as of 5/2004	Ongoing project. Voter education materials distributed to counties and precincts.
Update as of 5/2009	Ongoing project. Continue to distribute education and outreach materials developed in house. In addition have awarded grants to outside groups as provided in section 3.

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Performance Goal 5: Poll worker training

The Secretary of State will define uniform procedures for poll worker training by local election officials. These standards and processes will be provided in the elections manual.

Performance goal	Poll worker training
Timetable	Implementation beginning January 1, 2004 and ongoing
Criteria used to measure performance	Survey will be sent to poll workers to measure knowledge of new standards and procedures
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff, Local election officials
Update as of 5/2004	Ongoing project. Both large and small group training sessions held.
Update as of 5/2009	Ongoing project. Have established program of meeting on site with small groups of election officials. In addition have formed Poll worker Advisory committee of local officials to develop uniform materials.

Performance Goal 6: Election Official Training

The Secretary of State will perform extensive training session for local election officials using such regional networks as NACO (Nebraska Association of County Clerks). The Secretary of State's Office will also provide staff and procedures for training of election officials.

Performance goal	Election Official Training
Timetable	Implemented January 1, 2004; ongoing
Criteria used to measure performance	Election officials will be surveyed to measure knowledge of new standards and procedures
Officials monitoring this goal	Secretary of State, Deputy Secretary for Elections and staff
Update as of 5/2009	Ongoing project. Continue to develop training materials on various aspects of election administration. Currently working on training DVD for election officials and pollworkers.

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Section 9

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

An Administrative Complaint Procedure has been developed by the Secretary of State that includes the following provisions:

I. Filing of Complaint and Response

Any person may file a complaint with the Secretary of State who believes that a violation of Title III of the Help America Vote Act or corresponding sections of state statute has occurred, is occurring or is about to occur. Such complaint shall be filed on a form developed by the Secretary of State and shall contain the name, address and phone number of the person making the complaint, the nature of the violation of Title III of the Help America Vote Act or corresponding state statutes, the date of the violation if the violation had previously occurred and other information deemed necessary by the Secretary of State. The form shall also allow the person making the complaint to indicate whether he or she desires a hearing on the record regarding the complaint. The complaint form shall be signed by the person making the complaint and shall indicate that the person believes the facts contained on the form to be true. The completed form shall be notarized.

The Secretary of State may, prior to hearing, respond to the complaint based upon the complaint and the Secretary of State's own investigation. Such response shall be in writing and may include a remedy. The complainant may waive the request for a hearing upon review of the Secretary of State's response. If the hearing request is not waived the hearing shall be held as described below. The response from the Secretary of State, whether or not favorable to the complainant, shall in no way effect the complainant's right to a hearing under these procedures.

II. Hearing Procedure

If a hearing is requested, the Secretary of State shall appoint a hearing officer to conduct a hearing on the record. Complaints of a similar nature may be combined for purposes of a hearing on the record. If the hearing officer determines that the complaint has merit, the hearing officer shall prepare a written finding and suggest potential remedies to the Secretary of State. The Secretary of State shall take action to ensure the violation is corrected. If the

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hearing officer determines that there is no violation, the hearing officer shall issue a written finding dismissing the complaint.

If no public hearing is requested, the Secretary of State shall investigate the complaint. If the Secretary of State finds that the complaint has merit, the Secretary of State shall issue a written finding and take action to ensure the violation is corrected. If the Secretary of State determines that there is no violation, the Secretary of State shall issue a written finding dismissing the complaint.

Any written finding, whether by the hearing officer or the Secretary of State, shall be issued within 90 days of the filing of the complaint. This deadline may be waived in writing by the person making the complaint.

III. Alternative Dispute Resolution Process

Should the finding not be issued within 90 days of the filing of the complaint, the complaint shall be submitted to a dispute resolution center approved by the office of Dispute Resolution pursuant to the Dispute Resolution Act (Neb. Rev. Stat. §25-2901 et. seq.) for mediation. Any fees associated with such mediation shall be paid by the Secretary of State. The alternative dispute resolution process shall be completed within 60 days. Any records relating to the complaint shall be made available for the alternative dispute resolution process.

Section 10

- (10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.**

As Nebraska had no qualifying punch card precincts, all Title I monies received were under Section 101. A portion of this payment was needed to meet the mandates of Title III. (See Sections 1 and 6 for further information.) However, smaller amounts were used to fund the State Plan development as well as training and education efforts.

Section 11

- (11) How the State will conduct ongoing management of the plan except that the State may not make any material change in the administration of the plan unless the change...**

The State Plan Commission will continue to exist after the development of this plan and will meet at least once each year to evaluate and make necessary

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changes to the State Plan. The State Plan Commission will continue to exist until such time as the Title I and Title II monies are exhausted.

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

Upon review or suggestion by the State Plan Commission, any material changes to the State Plan shall be published in the Federal Register,

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

Upon review or suggestion by the State Plan Commission, any material changes to the State Plan shall be published and a period of public comment of not less than thirty days shall be provided.

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

No material changes to the State Plan shall be effective until at least 30 days after the date of publication in the Federal Register.

Section 12

(12) In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

2004 Amendment

This Plan includes amendments from the plan submitted in fiscal year 2003. Material changes include updating budget figures (Section 6) to reflect additional appropriated funds, both federal and matching, and corresponding planned expenditures. The budget section also includes actual figures (rather than estimates) for fiscal year 2003. Other references to additional appropriated funds are included in Sections 1

Other changes include amending references from "DRE's" to take into account other types of equipment that may be accessible to the disabled community. Also included are changes where the original plan provided for

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actions to be taken that have since been accomplished. Among these changes are provisional balloting, voter ID, voter information and updates in Section 8 regarding performance goals and measures. References to specific dates regarding the State Plan Commission process in FY 2003 and the description of the Commission (Section 13) procedures have also been amended.

2009 Amendment

Amendments in 2009 were added to address federal fund allocations in Federal FY '08 and '09. The most substantive changes are in the budget areas (Section 6) to recognize the FY '08 and '09 funding as well as replacing expenditure estimates for State FY '05 through '08 with actual expenditure levels. In addition, because of the additional funding, expenditure estimates are added through State FY '13.

Most other sections contain amendments to indicate completion of various aspects of the Plan, such as the Central Voter Registration Database and delivery and use of disabled accessible voting systems. Section 8 (Performance Goals) was similarly updated to reflect completed and ongoing projects.

As federal funding provided in FY '08 and '09 was unanticipated, the State Plan Commission recommended, at its May 2008 meeting to continue with the basic tenets of the plan by providing maintenance and upgrades to the voter registration systems and voting systems and eliminating such costs at the county level. However, recognizing that federal funding will not continue forever, the Commission recommended beginning a process to reduce the county election offices' reliance on federal monies.

Section 13

(13) A description of the commission which participated in the development of the State Plan in accordance with section 255 and the procedures followed by the commission under such section and section 256.

On February 28, 2003, Secretary John A. Gale, chief election officer for the state of Nebraska, appointed a sixteen member citizen advisory commission to help in the development of the State Plan. The Commission is called the Nebraska State Plan Commission. Members included the election officials from Nebraska's two largest counties, a mid-size county election official, President of the Nebraska County Clerks Association, a representative from the Secretary of State's office and representatives from various advocacy organizations. Secretary Gale took recommendations for these appointments so that the Commission was representative of a wide cross-section of Nebraskans, including the disability and minority communities.

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The State Plan Commission held meetings on March 18 and 26, April 7 and 21, and May 12, 2003. The initial State Plan developed from the recommendations of the Commission was released on June 9, 2003. The Plan was open for public comment and review for 30 days. The Plan was also the subject of a Public Hearing held on June 25, 2003. In addition to the public hearing, written comments on the Plan were solicited, either via a website or by other means. Media outlets were contacted to announce the completion of the Plan and the Public Comment period.

The State Plan Commission held additional meetings on November 18, 2003, February 26 and April 1, 2004 to review new developments and prepare suggested amendments to the State Plan Recommendations Report. The revised recommendations were completed in late April of 2004. The amended State Plan was published on June 21, 2004 for the initial 30 day comment period. It is available on the Secretary of State's website at <http://www.sos.state.ne.us/election/HAVA>.

The Commission held meetings in June and November of 2005 and June of 2007 during which updates on HAVA activities were provided. The Commission also met in June of 2008 to develop recommendations in light of the FY 08 federal appropriations.

Members of the State Plan Commission:

Member Name	Office/Group Represented
Carlos Castillo	Douglas County Election Commissioner Office (resigned due to change in employment)
David Phipps	Douglas County Election Commissioner Office
David Shively	Lancaster County Election Commissioner Office
DiAnna Schimek	State Senator/Chair of Government Committee (resigned – no longer member of Legislature)
Bill Avery	State Senator/Chair of Government Committee
Pauletta Gerver	Nebraska Association of County Clerks, Register of Deeds & Election Commissioners
Carlos Servan	Nebraska Commission of the Blind and Visually Impaired
Kathy Hoell	Statewide Independent Living Council, Inc.

John A. Gale Secretary of State State of Nebraska	Help America Vote Act of 2002 (HAVA) State Plan (with 2009 Amendments)
Lois Poppe	League of Women Voters
Wayne Houston	NAACP
Steve Virgil	Nebraska Legal Services (resigned due to change in employment)
Amy Bracht	Assistant Secretary of State (resigned due to change in employment)
Becky Richter	Assistant Secretary of State
Dr. D'Andra Orey	Professor/University of Nebraska—Lincoln (resigned)
Dale Baker	Hall County Election Commissioner
Holly Burns	Hispanic Community Center (resigned)
Dr. Sara Crook	Professor/Peru State College
Tim Shaw	Nebraska Advocacy Services, Inc.
June Remington Pederson	Lincoln Area Agency on Aging



MARY HERRERA
NEW MEXICO
SECRETARY OF
STATE

NEW MEXICO STATE PLAN
FY 08-09

As required by Public Law 107-252
Help America Vote Act 2002, Section 253 (b)

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Attachment A: RFP - Electronic Poll Book Pilot Project.....

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Executive Summary

As the New Mexico Secretary of State, I oversee the entire election process throughout the State of New Mexico. This includes maintaining a computerized database of statewide registered voters, testing, evaluating and certifying voting machines and producing precinct boundary maps.

We are blessed to live in a nation where we have the freedom to vote. This precious right has been won and protected by our brave men and women who have fought to defend our liberty.

As the Chief Elections Officer for the state, I am working diligently to remove any obstacle in an effort to assist and encourage the citizens of New Mexico to vote. This year, we are making it easier to vote.

Indeed, there is no greater privilege of freedom extended to the citizens of New Mexico than the right to vote and elect the officials for public service who represent them at all levels of government.

As part of the Help America Vote Act (HAVA) of 2002, I along with my staff have taken great effort to continue to make the voting process more accessible and user friendly for voters. It has been an honor to be involved in the implementation of projects that further improve the election process. This update is a living document and working plan of action that will continue to evolve. Through its implementation, it will empower New Mexican voters to voice their electoral preference in an environment that ensures the independence and integrity of their vote.

It is my pleasure, along with the staff of the New Mexico Secretary of State's Office to continue to improve the election process.

The following pages provide an update of New Mexico's commitment to the empowerment of its voters that synthesizes integrity, accessibility and self-determination.

Sincerely,



Mary Herrera

NM SECRETARY OF STATE**FY 08-09 STATE PLAN****INTRODUCTION**

This New Mexico State Election Plan for FY 08-09 is proposed in accordance with Public Law 107-252, Help America Vote Act 2002, Section 253 (b), was signed into law on October 29, 2002 and enacted to assist states in the administration of federal elections. This law establishes minimum standards for states and units of local governments with the responsibility for the *administration of federal elections*.

Since being newly elected for a four-year term, beginning January 01, 2007, the New Mexico Secretary of State Mary Herrera, has continued the process of working with the HAVA Advisory Commission, comprised of county clerks, election officials, state legislators, persons and agencies representing and working with people with disabilities. In compliance with the requirements under Title III, funding was provided for improving the accessibility and quality of polling places, training presiding judges, precinct officials, election volunteers and media outreach for informing voters with disabilities about the availability of accessible polling places as stipulated under Title I, Section 101, Title II, Section 251, Section 261 and Section 101.

For the purpose of this proposal and in response to funding being made available under HAVA, Title II, Section 251 for FY/08-09, as stipulated under Part I of Sub-title D of Title II, the New Mexico Secretary of State organized a committee to further improve the administration of elections for federal and statewide office. Based on the funding made available through this grant, the Secretary implemented a committee made up of county clerks, election staff from Lea, Taos and Valencia Counties and the Secretary of State's staff. A meeting was scheduled and held on April, 01, 2009 to consider an electronic poll book pilot project for further improving the administration of the election process in those counties identified above. (Note: The sole purpose of the committee identified is for improving the administration of the election process and not for replacing the HAVA Advisory Commission.) Since the intent of this initiative is to implement an Electronic Poll Book Pilot Project in the Counties of Lea, Taos and Valencia, New Mexico, these county government representatives were selected.

Further, at the discretion of the Secretary of State, funding under this grant is also being set aside for provision of services in accordance with Title II, Sections 261, 291 and 101. When funding becomes available, the Secretary of State shall convene a meeting with the HAVA Advisory Commission to consider recommendations provided for the initiatives identified below as Projects 2, 3 and 4 (page 20). The following are members of the HAVA Advisory Commission:

- Anthony Alarid – Gov. Commission on Disability
- Anne Arrasmith – Bernalillo County Clerk’s Office
- Lucy Birbiglia – Independent Living Resource Center
- Bernadine Chavez – Protection & Advocacy
- Tom Day – Protection & Advocacy
- Georgina Dimas – New Mexico Secretary of State’s Office
- Pat Putnam – Director, Developmental Disability Planning Council
- Art Schreiber – Advocate
- Gregg Trapp – Director Commission for the Blind
- Manny F. Vildasol – New Mexico Secretary of State’s Office

BACKGROUND

Since statehood, the Constitution and Statutes of the State of New Mexico require all election materials be provided in both, the English and Spanish languages. Over the past 25 years the State of New Mexico has continued to improve its election process.

Beginning in the mid-1980’s, the State of New Mexico began its transition from lever voting machines to direct recording electronic and optical scan voting systems. In the late 1980’s, the State of New Mexico installed a statewide automated records system, to include an integrated voter registration system. In 1999, the New Mexico State Legislature appropriated funding for the Office of the Secretary of State to begin the process towards the installation of a new and more interactive system to incorporate voter registration and voter management. Subsequently, the new system is now installed in 32 of the state’s 33 counties in a continuous effort to meet HAVA requirements. In recognition of the cost of voting systems acquisition, the state established the Machine Revolving Fund, a no-interest funding mechanism that counties may use to purchase new systems. Gradually, the debt ceiling of the fund has been raised to \$6.5 million, of which a portion is New Mexico’s HAVA matching funds.

In 1991, four years prior to the effective date of the National Voter Registration Act, New Mexico began registering voters at Motor Vehicle Division (MVD) site-offices. At the present time, voter registration services are being provided to the public via third-party agents, public libraries, MVD site-offices, universities, colleges and designated state agency-based site offices, whose primary mission is to provide public assistance to the general public and services to persons with disabilities.

Since 1993, the legislature recognized the need to expand opportunities for voting. Therefore, “early voting” activities were enacted, beginning three weeks prior to an election. New Mexico adopted the Federal Election Commission’s Voting Systems Standards in 1993, requiring that all systems certified by the state be independently tested, meet federal performance and test standards. Since then, New Mexico’s voters have been able to cast their ballot in person on at alternate locations. Early voting has become popular for the convenience it provides to voters.

In 1998, New Mexico began the use of an electronic canvassing system to ensure accuracy of results and elimination of manual entry and mathematical errors. In 2006, the state changed over to the paper ballot system, which tripled the audit of election returns. After counties audit the canvass, the state audits each county’s returns through a system of duplicate returns forwarded directly from the precinct to the Office of the Secretary of State. After the Bureau of Elections completes its audit, independent auditors contracted by the state re-examine the returns. Though this triple audit process, the State of New Mexico can ensure that the integrity and accuracy of its canvass process is maintained at the highest level.

Presently, New Mexico’s Election Code is uniformly applied in all 33 counties. The code requires that a uniform ballot be used throughout the entire state. In order to maintain uniformity, the Office of the Secretary of State approves all ballot content and layout for federal and statewide races.

VOTING SYSTEM STANDARDS

Section 301 of the Help America Vote Act sets forth specific standards for voting systems. HAVA requires each voting system to: 1) permit voters before casting their ballot to verify the candidates or questions they have voted; 2) allow voters to change or correct their vote in a private and independent manner; 3) inform voters if they have over voted (voting for more than one candidate for a single office); 4) inform the voter of the opportunity to receive a replacement ballot; 5) produce a paper record with a manual audit capability; 6) be accessible to people with disabilities through the use of at least one HAVA compliant voting system located at each polling site; 7) provide alternative language accessibility pursuant to Section 203 of the Voting Rights Act of 1965 via the ES&S AutoMARK™ voter assist terminal, a breakthrough ballot-marking technology that allows voters with disabilities and other special needs to mark a ballot privately and independently. The technology also provides language assistance to voters who are more comfortable speaking a different language or who need help to better understand written instructions; and 8) comply with error rates established under the provisions of HAVA. In addition, states are required to adopt uniform and non-discriminatory standards that define what constitutes a vote and what will be counted as a vote for each voting system.

The paper ballot voting system in the State of New Mexico provides a two-sided paper ballot so voters can verify their ballot before it is cast and counted.

Ballot Correction

HAVA provides an opportunity for states using paper ballot voting systems; requirements of the Act establish a voter education program specific to each voting system notifying voters of the effect of over voting. This notification requirement includes providing voters with instructions on how to correct the ballot.

The State of New Mexico has both statutory language and administrative procedures in place for paper ballot voting systems at the polls. Additional instructional signs are placed in all polling sites. Instructions on obtaining a replacement ballot for absentee voters are included in the mailed ballot materials. The Secretary of State posts instructional materials for all voting systems on its website. The State also instructs county clerks to post the information on their website.

Manual Audit Capacity

New Mexico statute requires that every voting system must have a manual audit capacity and the ability to produce a paper record. Other statistical information required is election date, precinct number, polling site, number of voters and votes cast, names of precinct board members, opening and closing of polling sites.

Disability Access

HAVA requires voting systems be accessible to voters with disabilities and citizens in need of special assistance. There must be the same opportunity for access, privacy, participation and independence that other voters enjoy.

The State of New Mexico has used HAVA federal funding to purchase one HAVA compliant voting system with audio assist for each polling site throughout the State.

This purchase being one of the highest priority items included training counties in programming and maintenance. A voter education program was developed to ensure voters with disabilities were fully educated on the use of the new HAVA compliant voting systems. Precinct official training programs were developed and implemented in order to provide election workers with the necessary skills to operate the systems for elections.

Further, New Mexico has long recognized the importance of providing accessible polling sites as part of its voter outreach efforts. Since 1979, the State of New Mexico has mandated that all polling sites be accessible to voters with disabilities or citizens with special needs. In order to maintain this requirement, a physical

inspection of the polling sites is conducted by county clerks prior to each election. To further ensure compliance and uniformity, the Office of the New Mexico Secretary of State has provided instructional materials to county clerks to enable them to evaluate polling site accessibility. In accordance with this program, the state continues to collaborate with the New Mexico Protection and Advocacy System in updating all instructional materials and encouraging those with disabilities to exercise their right to vote in a private and secure manner. A variety of methods, including independent consultants and local disability advocacy groups have been consulted to ensure each polling site in New Mexico has been surveyed for disability access. A continuous effort is extended to bring all polling sites into ADA compliance.

Alternative Language Accessibility

HAVA requires voting systems to provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965.

Under New Mexico's Constitution and Statutes, all election materials are required to be printed in the Spanish and English languages. Where minority language is historically unwritten, all proclamations, registrations, voting notices, instructions, assistance and other information related to the electoral process are provided orally in the respective minority language. This protocol also applies to the media when practicable, public meetings and on Election Day at the polling sites.

In 1988, the Office of the Secretary of State created its Native American Education Information Program. Two Native American Bureau of Election employees provide comprehensive and detailed election information to all tribes in the state. Election Proclamations and proposed ballot questions are translated into nine native languages. Once translated, they are radio broadcasted in counties with pueblo and tribal citizens in order to inform them of the intent and effect of the proposed ballot questions. Counties with large Native American populations have intertribal local programs and Native American staff that assist the surrounding populations and provide registration and election information programs. The Office of the Secretary of State facilitates training and assistance to local Native American coordinators. Counties with Native American populations provide translators at polling sites on election-day. In addition, ES&S AutoMARK™ Voter Assist Terminal also provides audio assistance to the visually impaired and alternative language accessibility.

Error Rates & ABD Definition of Vote (NEED TO CHANGE)

HAVA requires the error rate of all voting systems used to conduct federal elections shall comply with the current error rate standards by the Federal Election Commission. These error rates are attributed to the voting system and not due to the actions of individual voters.

All voting systems certified in the State of New Mexico are required to meet the federal standards under state statutes. Any future systems acquired in compliance with HAVA requirements shall also meet the established federal error rates.

HAVA also requires states adopt “uniform and non-discriminatory standards” for what constitutes a vote. New Mexico has seen an extraordinary increase in the use of absentee ballots by voters. By statute, a uniform, statewide definition of what constitutes a vote on paper ballot was established, in accordance with 1-9-4.2B (1-3), NMSA 1978. This instruction complies with federal election law.

Provisional Voting and Voting Information**Provisional Voting**

HAVA requires states provide a provisional ballot (“fail safe voting” under the National Voter Registration Act) to any individual who declares they are a registered voter and are eligible to vote in a federal election. The Act requires the State of New Mexico to provide a “free-access” system so an individual who casts a provisional ballot may determine whether or not their vote was counted.

New Mexico utilizes the “fail safe” voting provisions of the National Voter Registration Act (NVRA) of 1993. Provisional Voting was enacted into state law and will be a positive expansion of “fail safe” voting. New Mexico provides a provisional voting program, with all election materials necessary to allow voters to take full advantage of provisional ballots. In order for voters to determine the disposition of their provisional ballot, the Office of the Secretary of State provides a toll-free phone line. County election officials also provide a report on the disposition of each provisional ballot to the New Mexico Secretary of State’s Bureau of Elections. An administrative rule has been implemented to establish uniform procedures for provisional voting.

Voting Information

HAVA requires specific voting information be posted at every polling site on Election Day: including a sample ballot; instructions on how to vote and cast a provisional ballot; instructions for mail-in registrants; first-time voters; and general information on voting rights and voter fraud.

New Mexico currently posts and publishes voter information through a variety of media outlets available at various locations. Election Proclamations are published in legal notices for five consecutive days and constitutional amendments are published in legal notices in every county, four times prior to an election. These notices are also posted on the Secretary of State Mary Herrera's website and broadcast in Native American languages. The Office of the New Mexico Secretary of State publishes a voter guide with the listing of the offices, candidates on the ballot and the content (including pro and con arguments) of each constitutional amendment or general obligation bond. The Office of the New Mexico Secretary of State has maintained a toll-free telephone number for over 25 years, so all voters may receive voting assistance, inquire about the electoral process or report irregularities at the polling sites.

In addition to the information provided, New Mexico continuously strives to maintain compliance with all voter information requirements of the Help America Vote Act.

Computerized Statewide Voter Registration System

HAVA requires states to establish a "single, uniform, official, centralized, interactive, computerized state voter registration list defined, maintained and administered at the State level..."

In 1989, the New Mexico Election Code was amended to include the Automated Voter Records System Act. The act requires the Office of the New Mexico Secretary of State to establish a statewide computerized voter registration system. The Secretary of State's Information Technology staff collaborates with county clerks to generate monthly reports to address errors, other discrepancies and duplicate social security numbers. The State of New Mexico is permitted under the Privacy Act of 1974 to mandate the entire social security number for voter registration.

In 1999, the New Mexico Secretary of State's Office received legislative funding and began working with a committee of county clerks and data processors to establish a statewide voter registration system called the Voter Registration and Election Management System (VREMS). The committee developed system requirements, interviewed vendors, sought references from other states and worked with the State Purchasing Department to create a request for proposal process. After a selection was made by the committee, installation

in the pilot county began in early 2000. Presently, the statewide computer database system has been installed in 32 of the 33 counties in the State of New Mexico. The installation of the last county is expected to be completed by the end of the federal FY/08-09.

The system shall meet all HAVA standards and is designed to meet the list maintenance requirements of the National Voter Registration Act (NVRA). Presently, it is being centrally administered by the Office of the New Mexico Secretary of State.

Requirements for Voters Who Register by Mail (Mail-In Voter Registration)

Section 303 of the Help America Vote Act requires first-time voters who register by mail to submit documentation such as, valid photo ID, a copy of a current utility bill, bank statement, government check, paycheck or other government document that verifies the name and address of the voter. HAVA also requires the mail-in voter registration form to ask separate “yes” or “no” questions regarding citizenship and age. The form also must contain a statement that informs voters that if they respond “no” to either question, then they are not to complete the form. The Act requires the form contain language informing the first-time registrant by mail of the identification requirements.

In addition, the Secretary of State designed and implemented a new voter registration application form in compliance with federal and state requirements. The form includes a protocol for the county clerks to properly process registrations and informs first-time applicants when they have failed to file the required documents.

Training and Voter Outreach Education

HAVA requires states to provide training programs for local presiding judges, precinct officials and poll workers, including voter education programs.

Training

As the Chief Election Officer for the State of New Mexico, the Secretary of State is compelled by election law to “obtain and maintain uniformity in the application, operation and interpretation of the Election Code.” The Secretary of State is required to conduct election schools on a statewide basis including all 33 county clerks and provide supervision and training of precinct officials throughout the state. In addition, the Secretary of State must develop, print and distribute all forms and instructions, prescribed by the Secretary of State. The Secretary of State is currently in the process of providing these materials on the agency’s website.

The Secretary of the State conducts election schools for county clerks prior to each statewide election. An election school is a 2-3 day hands-on workshop covering many aspects of election administration and application, including the training for voting machine technicians. In FY/07-08, the Secretary of State provided two comprehensive election school training workshops to the 33 county clerks in the State of New Mexico. Additional training workshops are scheduled for FY/08-09. In addition to the scheduled election schools provided prior to an election, training workshops are made available upon request from the county clerks. Furthermore, the New Mexico Secretary of State's Office, Bureau of Elections regularly attends county clerk affiliate meetings to inform local election officials of any changes to state and federal law.

The Office of the New Mexico Secretary of State has expanded training, to include a comprehensive training manual for local precinct officials, presiding judges, election judges and other poll workers throughout the state. The Secretary of State has implemented a certification program that recognizes individuals who participate in the agency sponsored election schools. The goal of the Secretary of State is to establish statewide and national certification programs that recognize the importance of standardized training being provided to county clerks, their staff and election workers. This would include county election officials earning credit for classroom training, on-the-job experience, attending seminars and meetings on election administration. The certification would include a process for the testing of election officials and on-site reviews of county election practices and procedures. After completion of sufficient credit hours, a certificate would be awarded. Furthermore, ongoing certification would require continuous training, attendance at seminars and meetings and a regular evaluation of administrative practices.

The Secretary of State has provided technician voting machine certification training through the voting machine vendor. This would assure all 33 county clerks do not have to rely on vendors for the operation and programming of their voting system. Further, as a part of the state's training requirements, precinct board manuals have been updated as funding has been available and video instructional materials have been developed appropriate to each voting system in use. Also role-playing in the training of poll workers is utilized; the use of visual aids; the self-testing of poll workers following various training sessions; and ways of dealing with the shortage of poll workers in certain areas.

Training will continue to be provided to presiding judges and precinct officials on the needs and legal rights of all voters, including voters with disabilities, as they relate to the registration and voting process. In an effort to improve the election process for precinct officials and all voters in the State of New Mexico, the Secretary of State's Office is committed to working with Protection and Advocacy System Representatives, including, but

not limited to, the New Mexico Governor's Commission on Disability, the New Mexico Commission for the Blind and the American Association of Retired Persons.

The Bureau of Elections, within the Office of the Secretary of State, provides training, technical assistance and responds to queries from county clerks, precinct officials, elected officials, candidates and citizens. The bureau's staff monitors and supervises presiding judges and precinct officials training across the state.

Voter Outreach Education

User-friendly, non-technical voter outreach materials provide information for voters on the requirements for registration, use of voting systems and their rights as a voter. The New Mexico Secretary of State's Voter Guide is published prior to General Elections and includes a listing of offices and candidates on the ballot; a list of ballot questions; and an analysis of ballot questions both in English and Spanish languages. Similar information is provided to non-written Native American language speakers through radio broadcast. Furthermore, the New Mexico Secretary of State's Office is developing written materials for Native American languages that have been non-written languages, such as Navajo and Tewa Pueblo languages.

Voter and election information is provided on the New Mexico Secretary of State's website. Depending on funding availability, the Voter Guide may be mailed to every household in the state. Further, registration instructions and requirements are included on the Voter Registration Certificate Application, this may also be located on the New Mexico Secretary of State's website. Instructions to voters on the operation of voting systems are posted inside the privacy booth and absentee ballot instructions are included in the materials sent to voters.

Currently, the Office of the New Mexico Secretary of State's website provides a plethora of information, such as, but not limited to:

- General Election Information and Instructions
- Sample Ballots for All 33 Counties
- Native American Election Information
- Statewide Polling Site Locations
- Provisional Ballot Information
- General Information for Military and Overseas Voters
- Federal Identification Requirements for Registration by Mail

- Absentee Ballot Voting
- How to Obtain a Replacement Absentee Ballot
- How to Report Suspected Voter Fraud
- How to File an Administrative Complaint
- Campaign Finance Reporting
- Lobbyist Reports
- Financial Disclosures
- Political Action Committees
- Confidential Address Program
- Governmental Conduct Act
- Informational Voter Materials for Persons with Disabilities (Currently being developed for the website.)

The Secretary of State works with state agencies whose primary mission is to provide services to persons with disabilities and those receiving public assistance with the opportunity to register to vote.

Voter outreach programs were developed and implemented to encourage greater youth participation in the electoral process. As part of a statewide effort to increase voter turnout, poll-site location information is being promoted through television, radio and other written media formats.

Additional voter outreach is being undertaken to make sure the election process is accessible and accounts for the voter's needs that includes curbside voting and ballot access for those with medical emergencies on Election Day. To promote access for the deaf and hard of hearing, the Office of the Secretary of the State and county clerks throughout the state are utilizing Telecommunication Devices for the Deaf (TDDs) and training election staff on the use of these devices. In addition, separate communication lines are made available to them. Through direct publicity campaigns and assistance provided by community-based-disability organizations, the state has undertaken outreach efforts designed to educate persons with disabilities about their right to register, vote, how and where to do so.

County clerks throughout the state continue to be encouraged to apply for grants, under Section 261 of the Help America Vote Act, to upgrade facilities for better voter access.

ADMINISTRATIVE COMPLAINT PROCEDURE

HAVA § 402 (a) (1) mandates New Mexico to establish and maintain a state-based administrative Complaint procedure to remedy grievances under HAVA Title II, Section 251 (i.e. regarding voting systems standards, provisional voting, voting information and computerized statewide voter registration list requirements and requirements for voters who register by mail). HAVA sets forth the specific requirements of this administrative compliant procedure and NM Law [Laws 2003, Ch 356, § 5 (“Ch. 356”) essentially replicates the requirements. Following the development of the HAVA State Plan, the Secretary of State will implement a rule for this administrative compliant procedure in accordance with the State Rules Act [NMSA 1978 §§14-4-1 through 14-4-11 (1995)].

The administrative complaint procedure is intended both to be informal in nature and to work toward an administrative, not judicial resolution to the problem in violation of HAVA, Title III. The procedure will be flexible in addressing and resolving such complaints at the administrative level.

New Mexico’s Election Code has been structured and implemented to prevent or minimize the occurrence of voting problems. If any voting problems occur, the NM Secretary of State’s Office, State’s Bureau of Elections and the 33 county clerks strive to immediately address and remedy the problem. Over the years, the election officials have been very successful in addressing issues. New Mexico is in a good position to build upon its current problem-solving process through the implementation of the administrative compliant procedure envisioned by HAVA. New Mexico complies with most of HAVA’s Title III requirements and has enacted changes to its Election Code to meet the Title III requirements. Consequently, New Mexico anticipates very few allegations of Title III violations that cannot be resolved informally as election officials have been doing for years.

The State anticipates all aspects of its administrative compliant procedure will be open to the public. To meet the specific requirements of both HAVA and Ch. 356, New Mexico has adopted rules implementing an administrative complaint procedure as follows:

- A. Any complaint filed under the procedure must be limited to alleging a specific violation of Title III. In educating voters, New Mexico will inform all voters about Title III provisions and procedures for filing a complaint. To ensure the procedure is uniform and nondiscriminatory, both the information provided to voters and the administrative compliant procedure will be available in alternative languages and formats pursuant to HAVA § 402 (a) (2) (A) and the state election code.

- B. Consistent with and in compliance to, the 33 county clerks and the Secretary of State will continue to address oral complaints in an attempt to resolve the problem informally and expediently. However, a formal complaint alleging a Title III violation must be submitted in writing to the New Mexico Secretary of State's Bureau of Elections. A complaint form will be available from any county clerk, the New Mexico Secretary of the State and accessible on-line. HAVA § 402 (a) (2) (B); Ch. 356, § 5(B).
- C. A formal complaint alleging a Title III violation must be submitted to the Secretary of State's Bureau of Elections. HAVA § 402 (a) (2) (C); Ch. 356, § 5(C).
- D. If the Secretary of State receives duplicative or repetitive complaints alleging Title III violations, the Secretary may consolidate these for assessment, investigation and resolution. HAVA § 402 (a) (2) (D); Ch. 356, § 5 (B).
- E. If the Secretary of State determines a written complaint alleges an actual Title III violation and the complainant requests a hearing on his or her grievance, the Secretary of State will appoint a hearing officer to conduct a hearing on the record. If the complaint is directed at a county election official, the hearing officer may be an employee of the New Mexico Secretary of State. If the complaint is directed at the New Mexico Secretary of State, the Secretary shall appoint a neutral hearing officer with no working or personal relationship with the office of the New Mexico Secretary of State. The record will include, the written complaint, any written response to the complaint, all documentation provided in support of or in defense of the complaint, and the written or audio record of any formal proceedings conducted with regard to the complaint. HAVA § 402 (a) (2) (E); Ch. 356, § 5 (D).

The investigation and resolution process may include the following steps or actions by the Secretary of State, as deemed appropriate under the circumstances by:

- 1) sending an acknowledgement letter to the complainant, and notifying him /her they are entitled to a hearing on the record; and
- 2) making an initial assessment of the complaint and determining whether it alleges a bonafide Title III violation; and
- 3) seeking a response from the election official against whom a complaint is made; and
- 4) providing the complainant with a copy of any response received from the election official against whom a complaint is made and giving the complainant an opportunity to reply; and
- 5) engaging in formal resolution with the parties through a meeting, teleconference or other means; or
- 6) dismiss the complaint based on its clear failure to allege a Title II violation.

If the Secretary of State determines that a Title III violation has occurred, the State shall provide a remedy appropriate to the violation. Any remedy shall be in compliance with the provisions of the New Mexico Election Code. HAVA nor Ch. 356 defines an “appropriate remedy” for a Title III violation, the State has the flexibility to remedy the problem, but to ensure the problem does not recur. In no event shall the remedy involve either the payment of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include a written finding that Title III has been violated and the plan for rectifying the particular violation, an assurance additional training will be provided to the election official to ensure compliance with HAVA and the New Mexico Election Code and a commitment to better inform voters of their rights, etc. A notice will be posted on the website and a distributed news release as it deems appropriate, the NM Secretary of State’s Office shall publicize the results of its assessment and investigation of the complaint. HAVA § 402 (a) (2) (F); Ch. 356, § 5(E).

- F. If the Secretary of State determines that Title III has not been violated, the State shall dismiss the complaint. A notice shall be posted on the website and a distributed news release as appropriate, the New Mexico Secretary of State’s Office shall publicize the result of its assessment and investigation of the complaint that result in a finding that no Title III violation has occurred. HAVA § 408 (a) (2) (G); Ch. 356, § 5(E).
- G. The Secretary of State shall make a final determination regarding a written complaint within 90 days after it has been filed with the Secretary of State, unless the complainant consents to extending the deadline. This final determination shall be in writing, provided to the complainant and the election official against whom the complaint was made. An effort will be made to ensure the 90-day timeline is met, if additional time is needed, the State must request an extension of time from the complainant. If the complainant refuses to consent to an extension, either the State must make its final determination or the complaint will automatically proceed to alternative dispute resolution. HAVA § 402 (a) (2) (H); Ch. 356, § 5(F).
- H. If the NM Secretary of State fails to make a final determination within the 90-day timeline or as extended by consent of the complainant, the complaint shall be resolved pursuant to the procedures set forth in the New Mexico Governmental Dispute Resolution Act [NMSA 1978 §§ 12-8A-1 through 12-8A-5 (2000)]. This Act provides that the parties shall develop an agreement which will govern the alternative dispute resolution process. All the records and materials from the hearing shall be made available for use in the alternative dispute resolution procedure. The Secretary of State must adopt the agreement reached by the parties to the alternative dispute resolution procedure within 60 days after the complaint is referred for resolution under the New Mexico Governmental Dispute Resolution Act. HAVA § 402 (a) (2) (I); Ch. 356, § 5(F).

HAVA gives the State the discretion to choose what it deems to be the most appropriate method of complying with the elements of its HAVA State Plan. HAVA § 253 (c). Generally, the right to judicial review is specifically provided by statute. Neither HAVA nor Ch. 356 provides a statutory right to judicial review of a determination made by the State pursuant to the administrative complaint procedure. The New Mexico Administrative Procedure Act only “applies to agencies made subject to coverage by law,” NMSA 1978, § 12-8-23 (1969), and because Ch. 356 does not make the Secretary of State subject to this Act, the HAVA administrative complaint procedure need not comply with the Administrative Procedures Act requirements. New Mexico’s administrative complaint procedure will develop upon existing law and procedures, providing an informal and flexible approach to resolving Title III violations. Therefore, this procedure will not include judicial review provisions.

CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR**FY 08-09 STATE PLAN SUMMARY****Funding Distribution and Controls**

The Help America Vote Act requires States to include information on how they plan to establish funds used to make expenditures meet the various requirements of the Act; information on fund management; and information on estimated costs. Therefore, the Secretary of State intends to utilize federal funds to address the requirements placed on the state by the Help America Vote Act, under this HAVA Grant as identified in Title II, Section 251 for FY/08-'09, as stipulated under Part I of Sub-title D of Title II and for discretionary improvements in accordance to Title I, Section 101 and Title II, Sections 251, 261 and 291 as described below.

NOTE: The State of New Mexico has established an election fund account, separate from the State's General Fund and interest earned will be credited to the fund. The Secretary of State will centrally manage projects funded by HAVA requirements payments. Depending on the eventual level of federal funding, including the costs of maintenance and ongoing improvements required by HAVA.

Further, it is anticipated that the \$705,983 provided under the HAVA Grant as identified in Title II, Section 251 for FY 08-09 with a required 5% match from the State of New Mexico in the amount of \$37,157 will be used to provide the following:

The State Plan recommends that the State of New Mexico adopt the following changes to the State Plan from the previous year through:

Project # 1 - Implement pilot program with the counties of Lea, Taos and Valencia for testing of an Electronic Poll Book system in accordance with HAVA, Title II, Section 251 for FY 08-09, as stipulated under Part I of Sub-title D of Title II (refer to Attachment A).

Cost: \$665,545.00

Project # 2 -Facilitate statewide training for county clerks in ADA compliance and voter education, as well as other HAVA requirements in accordance with Title I, Section 101 and Title II, Sections 251, 261 and 291.

Cost: \$20,000

Project # 3 - Provide voter registration and election information campaigns to the general public through the media in accordance with Title I, Section 101 and Title II, Sections 251, 261 and 291.

Cost: \$47,595.00

Project # 4 - Provide Statewide Community Voter Registration and Voter Information Campaigns, including provisions for Persons with Disabilities in accordance with Title I, Section 101 and Title II, Sections 251, 261 and 291.

Cost: \$10,000

Project # 5 - Complete the installation of the computerized statewide voter registration file, interactive database for all registered voters known as Voter Registration and Election Management System (VREMS) among the 33 county clerks and the New Mexico Secretary of State's Office consisting of the election system in the State of New Mexico in accordance with HAVA, Title II, Section 251 for FY 08-09, as stipulated under Part I of Subtitle D of Title II.

Cost: \$0.00

NOTE: No funds will be made available to private organizations

Performance Goals and Measures

Performance Goals

The Secretary of the State shall, in collaboration with the county clerks, establish performance goals and institute a process to measure progress. Activities include, but are not limited to:

Project # 1 Goal

Local, statewide and federal elections in the State of New Mexico will improve in the counties of Lea, Taos and Valencia as a result of introducing and implementing an Electronic Poll Book System. (Note: Specifics for the implementation of this project will be identified in accordance with and in compliance to state laws and rules; and as set forth through a state contract approved by the State of New Mexico General Services Department, Procurement Services Division and the Department of Information and Technology; refer to Attachment A).

Date of Completion: 12/31/2010

Project # 2 Goal

Through educational workshops, the county clerks' and election workers' knowledge will increase in voter education, HAVA ADA compliance and NVRA requirements.

Date of Completion: 10/15/2010

Project # 3 Goal

Through a statewide media campaign, the general public's knowledge of voter registration and elections will increase.

Date of Completion: 11/15/2010

Project # 4 Goal

Through voter registration drives and voter education campaign initiatives, voter registrations and voter education will increase throughout the State of New Mexico.

Date of Completion: 12/31/2010

Project # 5 Goal

Through a collaborative effort between the New Mexico Secretary of State's Office, San Juan County Clerk's Office and the vendor, ES&S, the Statewide Interactive Voter Registration Election System (VREMS) will be completed.

Date of Completion: 10/01/2010

Measures

The following areas of each project will be measured and performance data will be collected for each:

- 1) Scope (measure events affecting cost, implementation, schedule or quality).
- 2) Schedule (progress toward goals); Resources (measures personnel and financial investment).
- 3) Quality (measures effectiveness); and Risk (measures impact of certain events on operations).

Note: New Mexico has already enacted performance-based budgeting for all state agencies.

Ongoing Maintenance Plan

HAVA requires states to include their plan comments on how they will conduct the ongoing management of the plan.

The New Mexico Secretary of State is the “Chief State Election Official” responsible for the coordination of all of the state responsibilities under the Act. This plan will be an essential component in New Mexico’s continuing effort to improve the elections process and comply with the provisions of the Help America Vote Act. While this plan is to meet requirements of HAVA, it is a matter of policy that the plan be considered a living, flexible, working document designed to assist New Mexico in the improvement and management of the election processes.

The Secretary of State understands and agrees to comply with HAVA requirements related to the ongoing management of the Act. The Secretary of State will not make any material change to this plan unless the change:

- 1) is developed and published in the Federal Register in accordance with Section 255 of the Act; and
- 2) is subject to public notice and comment in accordance with Section 256 of the Act in the same manner as the State Plan; and
- 3) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register.

Audit and Internal Controls

The State Auditor’s Office conducts audits of the Office of the New Mexico Secretary of State and related programs. Audits conducted by the State Auditor will be conducted according to accepted auditing standards for financial audits issued by the Comptroller General of the United States.

Maintenance Effort

The Help America Vote Act requires a State that receives “requirement” payments to maintain the expenditures of the State at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 01, 2009. This portion of the Act is often referred to as the “maintenance of effort” clause.

[FR Doc. E9-21509 Filed 9-4-09; 8:45 am]

BILLING CODE 6820-KF-C

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13535-000]

Muskingum Valley Hydro; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

September 1, 2009.

On July 6, 2009, Muskingum Valley Hydro filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Muskingum Valley Hoover Dam Hydroelectric Project No. 13535, to be located at the existing Hoover Dam, on the Big Walnut River, in Franklin County, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The existing Hoover Dam is owned and operated by the Ohio Department of Natural Resources and includes the existing reservoir, dam, outlet works, and tailrace. The proposed project would consist of: (1) The existing 85.5-foot-high earth fill concrete gravity Hoover Dam equipped with a 680-foot-long ogee spillway; (2) an existing 3,272-acre impoundment with a normal water surface elevation 890 feet mean sea level; (3) a new 30-foot-long by 30-foot-wide powerhouse containing two turbine generator units for a total installed capacity of 3.5 megawatts; (4) a new 600-foot-long, 14.7-kilovolt transmission line; and (5) appurtenant facilities. The proposed project would operate in run-of-river mode and generate an estimated average annual generation of 30,600,000 kilowatt-hours.

Applicant Contact: Randall J. Smith, Muskingum Valley Hydro, 4950 Frazeyburg Road, Zanesville, Ohio 43701, (740) 891-5424.

FERC Contact: Michael Watts, (202) 502-6123.

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

Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13535) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-21626 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2067-040]

Tri-Dam Project; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

September 1, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan (SMP).

b. *Project No:* 2067-040.

c. *Date Filed:* June 23, 2008.

d. *Applicant:* Tri-Dam Project.

e. *Name of Project:* Tulloch Project.

f. *Location:* The project is located on the main stem of the Stanislaus River in Calaveras and Tuolumne Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)-825(r).

h. *Applicant Contact:* Steve Felte, Tri-Dam Project, P.O. Box 1158, Pinecrest, CA 95364-0158, (209) 965-3996.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502-8674, or by e-mail: shana.high@ferc.gov.

j. *Deadline for filing comments and/or motions:* October 01, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Proposal:* Tri-Dam Project filed, for Commission approval, an SMP for the Tulloch Project to provide for: (1) An inventory of sensitive environmental resources within the project boundary; (2) maps of sensitive shoreline zones that should be afforded extra protection; (3) strategies to protect sensitive areas from inappropriate encroachment; (4) provisions for future updates to the SMP, as new information becomes available; and (5) provisions for informing shoreline private landowners about the importance of protecting the zones identified as having sensitive environmental resources.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3372 or e-mail FERCOnlineSupport@ferc.gov; for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-21627 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 31, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98-1992-006; ER08-444-004; ER06-1143-004.

Applicants: Medical Area Total Energy Plant, Inc., NSTAR Electric Company, MATEP LLC.

Description: NSTAR Electric Company *et al* request for full waiver of the Code of Conduct requirements for market-based rates *etc.*

Filed Date: 08/28/2009.

Accession Number: 20090831-0034.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER05-557-003.

Applicants: Grant Energy, Inc.

Description: Grant Energy, Inc submits Original Sheet 1 *et al* to FERC to its FERC Gas Tariff, First Revised Volume 1.

Filed Date: 08/28/2009.

Accession Number: 20090831-0026.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER06-615-052; ER08-367-006.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Second Substitute Third Revised Sheet 490 *et al* to FERC Electric Tariff, Fourth Replacement Volume 1.

Filed Date: 08/28/2009.

Accession Number: 20090831-0033.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER07-1344-002.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits Cost Based Formula Rate Agreement for Full Requirements Electric Service effective 9/1/09.

Filed Date: 08/28/2009.

Accession Number: 20090831-0003.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1356-001.

Applicants: Grand Ridge Energy LLC. *Description:* Grand Ridge Energy, LLC *et al* (Grand Ridge Companies) submits First Revised Sheet 1 *et al* to Rate Schedule FERC 1.

Filed Date: 08/28/2009.

Accession Number: 20090831-0025.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1643-000.

Applicants: E.ON U.S., LLC. *Description:* Louisville Gas and Electric Co *et al* submits First Revised Sheet 1 *et al* to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 08/28/2009.

Accession Number: 20090831-0035.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1644-000.

Applicants: Wisconsin Power and Light Company. *Description:* Wisconsin Power and Light Company submits Second Revised Sheet 11 *et al* to FERC Electric Tariff, Second Revised Volume 11.

Filed Date: 08/28/2009.

Accession Number: 20090831-0032.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1646-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits four unexecuted Firm Transmission Service

Agreements with Wasatch Intermountain, LLC designated as Service Agreement 584 through 587 under PacifiCorp's Seventh Revised Volume 11 *etc.*

Filed Date: 08/28/2009.

Accession Number: 20090831-0031.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1647-000.

Applicants: Entergy Services, Inc. *Description:* Entergy Services, Inc submits First Revised Service Agreement 535, an Affected System Facility Upgrade Agreement with Tennessee Valley Authority *etc.*

Filed Date: 08/28/2009.

Accession Number: 20090831-0030.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1648-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Notice of Termination and Consent to Termination of the Interconnection and Operating Agreement with Dakota I Power Partners, LLC.

Filed Date: 08/28/2009.

Accession Number: 20090831-0029.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1649-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Notice of Termination and Consent to Termination of the Large Generator Interconnection Agreement with Great River Energy.

Filed Date: 08/28/2009.

Accession Number: 20090831-0028.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Docket Numbers: ER09-1650-000.

Applicants: BP Wind Energy North America Inc., Fowler Ridge Wind Farm LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge III Wind Farm LLC, Dominion Fowler Ridge Wind II, LLC.

Description: BP Wind Energy North America, Inc *et al* submits Original Sheet 1 *et al* to FERC Rate Schedule Original Volume 1.

Filed Date: 08/28/2009.

Accession Number: 20090831-0027.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It

is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-21489 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 28, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09-90-000.

Applicants: BP Wind Energy North America Inc.

Description: Notice of Self-Certification of BP Wind Energy North America Inc. as an Exempt Wholesale Generator.

Filed Date: 08/28/2009.

Accession Number: 20090828-5039.

Comment Date: 5 p.m. Eastern Time on Friday, September 18, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99-1435-020.

Applicants: Avista Corporation.

Description: Avista Corporations submits its compliance filing as required by Order 697.

Filed Date: 08/27/2009.

Accession Number: 20090828-0060.

Comment Date: 5 p.m. Eastern Time on Thursday, September 17, 2009.

Docket Numbers: ER09-1367-001.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co submits a substitute to the 6/29/09 Facilities Agreement with ITC Midwest, LLC.

Filed Date: 08/27/2009.

Accession Number: 20090827-0052.

Comment Date: 5 p.m. Eastern Time on Thursday, September 17, 2009.

Docket Numbers: ER09-1423-002.

Applicants: Verde Energy USA, Inc. *Description:* Verde Energy USA, Inc submits Substitute Original Sheet 1.

Filed Date: 08/28/2009.

Accession Number: 20090828-0133.

Comment Date: 5 p.m. Eastern Time on Friday, September 04, 2009.

Docket Numbers: ER09-1617-001.

Applicants: Midwest Independent Transmission System Operator, Inc

Description: Midwest Independent Transmission System Operator, Inc submits an amended and restated version of the Interconnection Agreement.

Filed Date: 08/27/2009.

Accession Number: 20090828-0139.

Comment Date: 5 p.m. Eastern Time on Thursday, September 17, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09-49-000.

Applicants: Old Dominion Electric Cooperative, Inc.

Description: Application for Authorization to Issue Debt Under Section 204(a) of the Federal Power Act and for Exemption from the Commission's Competitive Bidding Requirements under Section 34.2 of Old Dominion Electric Cooperative.

Filed Date: 08/27/2009.

Accession Number: 20090827-5079.

Comment Date: 5 p.m. Eastern Time on Thursday, September 17, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-21491 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

September 01, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04-230-043; ER01-3155-028; ER01-1385-037; EL01-45-036.

Applicants: New York Independent System Operator, Inc.; Consolidated Edison Company of New York.

Description: NYISO's Nineteenth Quarterly Report.

Filed Date: 09/01/2009.

Accession Number: 20090901-5134.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 22, 2009.

Docket Numbers: ER06-1355-003.

Applicants: Evergreen Wind Power, LLC.

Description: Evergreen Wind Power, LLC submits revised market based rate tariffs that provide a reference to its Certification of Qualifying Facility Status.

Filed Date: 08/21/2009.

Accession Number: 20090825-0046.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER08-1195-001.

Applicants: Red Hills Wind Project, L.L.C.

Description: Supplement to Notice of Non-Material Change in Status of Red Hills Wind Project, L.L.C.

Filed Date: 08/31/2009.

Accession Number: 20090831-5248.

Comment Date: 5 p.m. Eastern Time on Thursday, September 10, 2009.

Docket Numbers: ER09-980-000.

Applicants: WSPP Inc.

Description: WSPP, Inc submits workpapers and/or documentation supporting the cost based rate of Public Service Company of Colorado *et al.*

Filed Date: 08/26/2009.

Accession Number: 20090828-0055.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 16, 2009.

Docket Numbers: ER09-1218-002.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co submits an amendment to the May 29, 2009 filing of Revisions to OATT Formula Transmission Rate to Reflect Settlement with Customer and Answer to Deficiency Letter.

Filed Date: 08/31/2009.

Accession Number: 20090831-0083.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1254-001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Revisions to the Open Access Transmission Tariff to Reform Generation Interconnection Procedures, effective 6/2/09.

Filed Date: 08/31/2009.

Accession Number: 20090901-0045.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1255-002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Second Revised Sheet 385 *et al.* to its FERC Electric Tariff, Fifth Revised Volume 1.

Filed Date: 08/31/2009.

Accession Number: 20090901-0054.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1618-000.

Applicants: Montana Alberta Tie Ltd. and MATL LLP's Request for Section 205 authorization.

Filed Date: 08/21/2009.

Accession Number: 20090821-5103.

Comment Date: 5 p.m. Eastern Time on Friday, September 11, 2009.

Docket Numbers: ER09-1651-000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits counterpart signature pages of New England Power Pool Agreement.

Filed Date: 08/31/2009.

Accession Number: 20090831-0041.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1652-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits executed interconnection service agreement between PJM, Calvert Cliffs 3 Nuclear Project, LLC, and Baltimore Gas and Electric Company.

Filed Date: 08/31/2009.

Accession Number: 20090831-0040.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1653-000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits First Revised Sheet No 67 *et al.* to its FERC Electric Tariff, Third Revised Volume No 4.

Filed Date: 08/31/2009.

Accession Number: 20090831-0039.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1654-000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits Original Sheet 1 to FERC Rate Schedule 109.

Filed Date: 08/31/2009.

Accession Number: 20090831-0038.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1655-000.

Applicants: Fowler Ridge II Wind Farm LLC.

Description: Application of Fowler Ridge II Wind Farm LLC for order accepting initial market-based rate tariff, waiving regulations and granting blanket approvals.

Filed Date: 09/01/2009.

Accession Number: 20090901-0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 22, 2009.

Docket Numbers: ER09-1657-000.

Applicants: Midwest ISO Transmission Owners, Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator *et al.* submit Second Revised Sheet 2626 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 08/31/2009.

Accession Number: 20090901-0046.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1658-000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company submits First Revised Sheet 36 *et al.*, to First Revised Rate Schedule FERC 109, to be effective 9/1/09.

Filed Date: 08/31/2009.

Accession Number: 20090901-0047.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1659-000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company submits First Revised Sheet 18 *et al.* to First Revised Rate Schedule FERC 78 for the Purchase of Electricity for Resale with Craig-Botetourt Electric Coop, to be effective 9/1/09.

Filed Date: 08/31/2009.

Accession Number: 20090901-0048.

Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1660-000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company submits First Revised Sheet 16 *et al.* to FERC Electric Tariff, Second Revised Volume 1, to be effective 9/1/09.

Filed Date: 08/31/2009.

Accession Number: 20090901-0049.
Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1661-000.
Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits the System Balancing Service Agreement under FERC Rate Schedule 265, to be effective 10/30/09.

Filed Date: 08/31/2009.

Accession Number: 20090901-0055.
Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1662-000.
Applicants: PacifiCorp.

Description: PacifiCorp submits Third Revised Sheet No. 355 *et al.* to FERC Electric Tariff, Seventh Revised Volume No. 11, effective 8/1/09.

Filed Date: 08/31/2009.

Accession Number: 20090901-0050.
Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1663-000.
Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits Ninth Revised Sheet 523L.01 *et al.* to FERC Electric Tariff, Sixth Revised Volume 1, to be effective 11/2/09.

Filed Date: 08/31/2009.

Accession Number: 20090901-0051.
Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1664-000.
Applicants: Ameren Services Company.

Description: Central Illinois Public Service Co submits an executed revised service agreement for Wholesale Distribution Service with Wayne-White Counties Electric Cooperative.

Filed Date: 08/31/2009.

Accession Number: 20090901-0052.
Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Docket Numbers: ER09-1665-000.
Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Service Agreement for Network Integration Transmission Service with City of Osage City, Kansas *etc.*

Filed Date: 08/31/2009.

Accession Number: 20090901-0053.
Comment Date: 5 p.m. Eastern Time on Monday, September 21, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09-50-000.

Applicants: PacifiCorp.

Description: Application for Authorization to Issue and Sell Up To

\$1.5 Billion of Promissory Notes or Other Evidences of Unsecured Short-Term Indebtedness of PacifiCorp.

Filed Date: 09/01/2009.

Accession Number: 20090901-5100.
Comment Date: 5 p.m. Eastern Time on Tuesday, September 22, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD09-11-000.

Applicants: North American Electric Reliability Corporation.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraphs 26 and 51.

Filed Date: 08/28/2009.

Accession Number: 20090828-5130.
Comment Date: 5 p.m. Eastern Time on Friday, September 18, 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.

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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.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-21628 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09-69-000]

Ameren Services Company, Complainant, v. Prairieland Energy, Inc., Respondent; Notice of Complaint

September 1, 2009.

Take notice that on August 28, 2009, pursuant to sections 206 and 306 of the Federal Power Act, and Rule 206 of the Commission's regulations, 18 CFR 385.206, Ameren Services Company (Complainant) filed a formal complaint against Prairieland Energy, Inc (Respondent) alleging that the Respondent violated its service agreement by failing to provide information concerning the operation of its behind-the-meter generation. Complainant also assert that Respondent was billed for service based on net load rather than gross load in violation of Midwest Independent Transmission System Operator, Inc. open access transmission tariff and related business practice manuals.

Complainant states that a copy of the complaint has been served on the representatives of Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on September 17, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-21625 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09-68-000]

PJM Interconnection, L.L.C.; Notice of Filing

August 31, 2009.

Take notice that on August 26, 2009, PJM Interconnection, L.L.C. (PJM) filed proposed *pro forma* revised tariff provisions to strengthen demand response and facilitate the transition to price responsive demand at the retail level ultimately leading to the elimination of wholesale demand response programs as unnecessary.¹

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

¹ PJM originally submitted this filing in Docket No. EL08-12.

comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on September 16, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-21490 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ08-4-002]

East Kentucky Power Cooperative, Inc.; Notice of Filing

August 31, 2009.

Take notice that on August 14, 2009, East Kentucky Power Cooperative, Inc. filed amendments to Attachment M, *Transmission Planning Processes*, of its safe harbor Open Access Transmission Tariff in compliance with the Commission's June 18, 2009 Order, Order Conditionally Granting Petition for Declaratory Order, *East Kentucky Power Cooperative, Inc.*, 127 FERC 61,280 (2009).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on September 4, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-21488 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08-58-002]

Pepco Energy Services, Inc. v. PJM Interconnection, L.L.C.; Notice of Filing

September 1, 2009.

Take notice that on August 31, 2009, PJM Interconnection, L.L.C. filed a refund report in compliance with the Commission's order issued July 16, 2009, *Order on Complaint*, 128 FERC 61,051 (2009) (July 16 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on September 21, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-21624 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1605-000]

Silver Sage Windpower, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

August 31, 2009.

This is a supplemental notice in the above-referenced proceeding of Silver Sage Windpower, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214). Anyone filing a motion

to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 21, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9-21492 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1549-000]

First Wind Energy Marketing, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 31, 2009.

This is a supplemental notice in the above-referenced proceeding of First Wind Energy Marketing, LLC's application for market-based rate

authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is September 21, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9-21493 Filed 9-4-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. PR09–27–001]

UGI Central Penn Gas, Inc.; Notice of Revised Rate Election

September 1, 2009.

Take notice that on August 31, 2009, UGI Central Penn Gas, Inc. (CPG) filed a Revised Rate Summary pursuant to section 284.123(e) of the Commission's regulations. CPG filed to update its section 311 rate elections in Docket No. PR09–27–000 to reflect the Pennsylvania Public Utility Commission's August 27, 2009, adoption of new rates for city-gate transportation service under Rate Schedule GD and storage service under Rate Schedule S of CPG's tariff: Gas—PA P.U.C. No. 3. The revised transportation and storage rates are effective August 28, 2009.

Any person desiring to participate in this rate filing must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 15, 2009.

Kimberly D. Bose,
Secretary.

[FR Doc. E9–21623 Filed 9–4–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2009–0328, FRL–8954–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulations.gov Information Collection; OMB Control No. 2025–0008, EPA ICR No. 2357.02

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 8, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2009–0328 to (1) EPA online using <http://www.regulations.gov> (our preferred method), by e-mail brackett.shanita@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, mail code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shanita Brackett, OEI/OIC/CStD at the Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (MC 2822–T), Washington, DC 20460; telephone number (202) 566–1008; fax Number (202) 566–1611; e-mail address: brackett.shanita@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 26, 2009 (74 FR 24849), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2009–0328, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Office of Environmental Information 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 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 Environmental Information Docket is 202–566–1752.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

Title: Regulations.gov Information Collection.

ICR numbers: EPA ICR No. 2357.02, OMB Control No. 2025–0008.

ICR Status: This ICR is scheduled to expire on November 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or

by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In response to the Presidential memorandum, the eRulemaking Program launched the *Regulations.gov* 'feedback exchange' Web site in May 2009. This interactive Web site will showcase new technologies being considered for *Regulations.gov*. The 'feedback exchange' will serve as a learning laboratory for open government, enabling the public to provide input on the *Regulations.gov* interface, build a community of practice on the Federal regulatory development process, and ensure that the eRulemaking Program can efficiently manage federal resources by testing new tools before they are launched.

The *Regulations.gov* 'feedback exchange' Web site will provide the public with a preview of new technologies considered for *Regulations.gov*. It will also enable the public to provide feedback on these technologies. Technologies considered for the *Regulations.gov* 'feedback exchange' include: User Profiles; Comment Threads and Wikis; Ratings, Polls, and Tagging; an interactive Educational Tool; and an Information Export capability. These technologies will be deployed iteratively, with components deployed upon the site's release in May 2009 and during subsequent upgrades to the Web site. User profiles enable the public to register on the site and pre-load submitter information for later use as well as save their own personalized searches, RSS feeds, and e-mail alerts without the use of persistent cookies. Comment Threads allow the public to enter into virtual conversations with one another about a topic. Wikis enable the public to collaboratively develop and modify narrative descriptions about a topic. Ratings and Polls allow the public to indicate a preference for a topic or issue via the selection of stars or thumbs up/thumbs down icons which graphically provide an at-a-glance indication of public sentiment and can simplify navigation. Tagging provides the public with the ability to tag or label information they or someone else has posted to the site to ease navigation and to promote the formation of common interest categories. The Educational Tool will inform the public about the Federal rulemaking process through interactive text and images. The Data Export capability enables the public to download and review the

contents of a rulemaking docket as well as mix and match such information with other information in a new way (also known as a "mash-up"). The *Regulations.gov* 'feedback exchange' will rely on voluntary feedback from Government, Industry, Academia and Citizenry to improve *Regulations.gov* as time goes on.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 35 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities:

Anyone who chooses to visit *Regulations.gov*.

Estimated Number of Respondents: 1000.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 35 hours.

Estimated Capital or Operations & Maintenance Annual Costs: \$0.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 1, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9-21548 Filed 9-4-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8954-2]

Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the Local Government Advisory Committee (LGAC).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Local Government Advisory Committee (LGAC). Vacancies are anticipated to be filled by January 2010. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

Background: The LGAC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established the LGAC in 1993 to provide independent advice to the EPA Administrator on a broad range of environmental issues affecting local government. Members serve as local elected and appointed officials representing: counties, cities, and other local governments; small communities; tribal governments; and state governments. Members are appointed by the EPA Administrator for two year terms with the possibility of reappointment to a second term. The LGAC usually meets 2-3 times annually and the average workload for the members is approximately 5 to 10 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business. EPA is seeking nominations from mayors, city council members, county commissioners and executives, city managers, small town officials, public works and environmental directors, tribal governments, and state officials including legislators and environmental directors. Nominees will be considered according to the mandates of FACA, which requires committees to maintain diversity across a broad range of constituencies, sectors, interests, and groups. EPA strongly encourages nominations from women and minorities.

The following criteria will be used to evaluate nominees:

- Experience serving as an elected official;
- Experience serving as an appointed official for a state, county, city or tribe;
- Experience in working at the national level on local governments issues;
- Demonstrated experience with environmental and sustainability issues;
- Executive management level experience with membership in broad-based networks;
- Excellent interpersonal, oral and written communication, and consensus-building skills.

—Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters. Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, e-mail address, and daytime telephone number. Interested candidates may self-nominate.

ADDRESSES: Submit nominations to: Frances Eargle, Designated Federal Officer, Office of Congressional and Intergovernmental Relations, U.S. Environmental Protection Agency (1301A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also e-mail nominations with subject line LGACRESUME2009 to eargle.frances@epa.gov.

FOR FURTHER INFORMATION CONTACT: Frances Eargle, Designated Federal Officer, U.S. EPA; telephone (202) 564-3115; fax: (202) 564-1544.

Dated: August 25, 2009.

Frances Eargle,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. E9-21547 Filed 9-4-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on August 26, 2009 concerning a request for comment on an information collection that is going to be submitted to the Office of Management and Budget (OMB). The document did not contain an ending comment date in the **DATES** section of the notice.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202-418-0214 or via the Internet at Judith-B.Herman@fcc.gov.

Correction

In the **Federal Register** of August 26, 2009, in FR Doc. E9-20556, on page

43126, in the second column, correct the “**DATES**” caption to read:

DATES: Persons wishing to comment on this information collection should submit comments by October 8, 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.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9-21596 Filed 9-4-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: APPALACHIAN BROADCASTING COMPANY, INC., Station WGOG, Facility ID 2462, BPH-20090819AGW, From WALHALLA, SC, To POWDERSVILLE, SC; BMP AUSTIN LICENSE COMPANY, L.P., Station KXXS, Facility ID 19223, BPH-20090811ACJ, From ELGIN, TX, To SUNSET VALLEY, TX; BRISTOL BROADCASTING COMPANY, INC., Station WFHG-FM, Facility ID 36982, BPH-20090729AEG, From ABINGDON, VA, To BLUFF CITY, TN; CAPSTAR TX LIMITED PARTNERSHIP, Station KMRQ, Facility ID 12963, BPH-20090820ABX, From MANTECA, CA, To RIVERBANK, CA; CHOICE BROADCASTING COMPANY, Station KCNMF-FM, Facility ID 77695, BMPH-20090818AAB, From GARAPAN-SAIPAN, MP, To TAMUNING, GU; COLLEGE CREEK MEDIA, LLC, Station KHIIJ, Facility ID 164142, BPH-20090813ABB, From MESQUITE, NV, To BUNKERVILLE, NV; COX RADIO, INC., Station WHZT, Facility ID 5971, BPH-20090819AGV, From SENECA, SC, To WILLIAMSTON, SC; DAVIDSON COUNTY BROADCASTING CO, INC., Station WTHZ, Facility ID 15839, BMPH-20090724ACK, From LEXINGTON, NC, To FAITH, NC; FREQUENCY COLLABORATION CORP., Station KDRX, Facility ID 165967, BMPH-20070118AEA, From ROCKSPRINGS, TX, To LAUGHLIN AFB, TX; KIERTRON, INC., Station KCBC, Facility ID 34587, BP-

20090820ABR, From RIVERBANK, CA, To MANTECA, CA; RADIO STATIONS WPAY/WPFB, INC., Station WPAY-FM, Facility ID 54813, BPH-20090715AAJ, From PORTSMOUTH, OH, To NEW BOSTON, OH; RADIOACTIVE, LLC, Station WRAX, Facility ID 164247, BMPH-20090818ABD, From WALHALLA, MI, To LAKE ISABELLA, MI; SIMMONS-AUSTIN, LS, LLC, Station KWNX, Facility ID 35647, BP-20090819AHB, From TAYLOR, TX, To ELGIN, TX; TEXAS PELICAN MEDIA, Station KTPM, Facility ID 176117, BMPED-20090730AEJ, From FALFURRIAS, TX, To PREMONT, TX; TUGART PROPERTIES, LLC, Station WSNW, Facility ID 5969, BP-20090819AGX, From SENECA, SC, To WALHALLA, SC; YAQUINA BAY COMMUNICATIONS, INC., Station KYTE, Facility ID 9848, BPH-20090629AAD, From NEWPORT, OR, To INDEPENDENCE, OR.

DATES: Comments may be filed through November 9, 2009.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202-418-2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm. A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E9-21593 Filed 9-4-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 09-1979]

FCC Requests Additional Nominations for Membership on the Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the purpose of this notice is to solicit additional nominations for the Technological Advisory Council (TAC).

DATES: Nominations are due by September 30, 2009.

ADDRESSES: Federal Communications Commission, Walter Johnston, Chief, Electromagnetic Compatibility Division, Office of Engineering and Technology, 445 12th Street, SW., Room 7-A224, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Walter Johnston, Office of Engineering and Technology, Federal Communications Commission, (202) 418-0807, *e-mail:* Walter.Johnston@fcc.gov, TTY (202) 418-2989.

SUPPLEMENTARY INFORMATION: On April 8, 2009, the Commission issued a public notice soliciting nominations for the Technical Advisory Council (TAC) and nominations were received in response to this notice. Concurrent with the establishment of the TAC, the Commission was charged by Congress to develop a plan that seeks to ensure that people of the United States have access to broadband capability. In support of this and related efforts, the Commission is now seeking additional nominations to the TAC to ensure that its membership best serves the needs of the Commission.

The Commission will accept nominations for the Council through September 30, 2009. Nominations previously submitted remain in consideration. The Commission, at its discretion, may consider nominations received after this date, but consideration of late submissions is not guaranteed. Individuals may apply for, or nominate another individual for, membership on the Council. Each nomination or application must include:

- a. The name and title of the applicant or nominee and a description of the interest the applicant or nominee will represent;
- b. The applicant's or nominee's mail address, e-mail address, telephone number, and facsimile number (where available);
- c. Reasons why the applicant or nominee should be appointed to the Council; and
- d. The basis for determining the applicant or nominee has achieved peer recognition as a technical expert.

Further details on the TAC are provided in the April 8, 2009 public notice available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-796A1.doc.

Nominations and applications should be sent to Walter Johnston, Chief, Electromagnetic Compatibility Division, Federal Communications Commission, 445 12th Street, SW., Room 7-A224, Washington, DC 20554 or e-mail Walter.Johnston@fcc.gov and please include "TAC nomination" in the subject line.

Federal Communications Commission.

Julius P. Knapp,
Chief, Office of Engineering and Technology.
[FR Doc. E9-21595 Filed 9-4-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Wednesday, September 9, 2009, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Honoring Employee with 35-Years of Federal Service.

Memorandum and resolution re: Final Rule on Deposit Insurance Rules.

Memorandum and resolution re: Final Rule for Part 329, Elimination of the Three-Transfer Sublimit for Savings Deposits.

Discussion Agenda

Memorandum and resolution related to the Temporary Liquidity Guarantee Program.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit <http://www.vodium.com/goto/fdic/boardmeetings.asp> to view the event. If

you need any technical assistance, please visit our Video Help page at: <http://www.fdic.gov/video.html>.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562-6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898-7043.

Dated: September 2, 2009.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9-21615 Filed 9-4-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09-08AG]

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) 639-4766 or send an email to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-5809. Written comments should be received within 30 days of this notice.

Proposed Project

Formative Research and Tool Development—New—National Center for HIV, viral hepatitis, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC previously published a clearance mechanism to support behavioral projects for HIV/AIDS prevention and control (**Federal Register**, volume 73, number 33, page 492, January 3, 2008). This project has been expanded to include formative research, and instrument testing for, sexually transmitted infections (STI), viral hepatitis, and tuberculosis elimination.

Formative research is the basis for developing effective strategies including

communication channels, for influencing behavior change. It helps researchers identify and understand the characteristics—interests, behaviors and needs—of target populations that influence their decisions and actions. Formative research is integral in developing programs as well as improving existing and ongoing programs. Formative research also looks at the community in which an intervention is being or planning to be implemented and helps the project staff understand the interests, attributes and needs of different populations and persons in their community. Formative research is research that occurs before a program is designed and implemented, or while a program is being conducted. Formative research is an integral part of developing programs or adapting programs that deal with the complexity of behaviors, social context, cultural identities, and health care that underlie the epidemiology of HIV/AIDS, viral hepatitis, STDs, and TB in the U.S.

CDC conducts formative research to develop public-sensitive communication messages and user-friendly tools prior to developing or recommending interventions, or care. Sometimes these studies are entirely behavioral but most often they are cycles of interviews and focus groups designed to inform the formation of a product. Short term qualitative interviewing and cognitive research techniques have previously proven invaluable in the development of

scientifically valid and population-appropriate methods, interventions, and instruments. Products from the proposed studies will be used for sustainable projects for HIV/AIDS, Sexually Transmitted Infections (STI), viral Hepatitis, and Tuberculosis prevention that are presented as evidence to disease specific National Advisory Committees, in order to support revisions to existing prevention and intervention methods, and provide new recommendations which cannot be developed without formative research.

This request includes studies investigating the utility and acceptability of proposed recruitment methods, intervention contents and delivery, questionnaire domains, individual questions, and interactions with project staff or electronic data collection equipment. These activities will also provide information about how respondents answer questions and ways in which question response bias and error can be reduced. Overall, these development activities are intended to provide information that will increase the success of the surveillance or research project through increasing response rates and decreasing response error thereby decreasing future data collection burden to the public. The studies that will be covered under this request will include one or more of the following investigational modalities: (1) Focus group and individual interviews; (2) Cognitive interviews for development and testing of specific data

collection instruments; (3) Component testing of instruments developed from qualitative research or communication methods; (4) testing of behavioral interventions; (5) public acceptance of intervention and prevention methods; (6) utilizing computer-assisted instruments (including web-based technology). The implementors may be health jurisdictions, non-governmental organizations including academia, for-profit contractors, private health care facilities, pharmacies, or a combination of these agencies.

Respondents who will participate in individual and group interviews (qualitative, cognitive, and computer-assisted development activities) are selected purposely from those who respond to recruitment advertisements. In addition to utilizing advertisements for recruitment, respondents who will participate in research on survey methods may be selected purposely or systematically from within an ongoing surveillance or research project. Participants may be offered cash or gift certificates as tokens of appreciation for participating.

CDC estimates that the public will participate in 10 different information collection activities, each lasting between 6–12 months. Participation of respondents is always voluntary and there is no cost to the respondents other than their time. The estimated annual burden hours requested is 46,516 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
General public and health care providers	Screener	81,200	1	10/60
General public and health care providers	Consent Forms	40,600	1	5/60
General public and health care providers	Individual interview	6,600	1	1
General public and health care providers	Group interview	4,000	1	2
General public and health care providers	Individual Survey	30,000	1	30/60

Dated: September 2, 2009.
Maryam I. Daneshvar,
Acting Reports Clearance Officer, Centers for Disease Control and Prevention.
 [FR Doc. E9–21676 Filed 9–4–09; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60–Day–09–0741]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and

Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The Study to Explore Early Development, [OMB# 0920-0741 Exp. 6/30/2010]—Revision—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

The Children's Health Act of 2000 mandated CDC to establish autism surveillance and research programs to address the number, incidence, correlates, and causes of autism and related disabilities. Under the provisions of this act, CDC funded 5 Centers for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) including the California

Department of Health and Human Services, Colorado Department of Public Health and Environment, Johns Hopkins University, the University of Pennsylvania, and the University of North Carolina at Chapel Hill. CDC National Center on Birth Defects and Developmental Disabilities participates as the 6th CADDRE site. The SEED multi-site, collaborative project is an epidemiological investigation of possible causes for the autism spectrum disorders.

Study participants are to be selected from children born in and residing in the following six areas: Atlanta metropolitan area, San Francisco Bay area, Denver metropolitan area, Baltimore metropolitan area, Philadelphia metropolitan area, and Central North Carolina. Children with autism spectrum disorders are compared to children with other developmental problems, referred to as the neurodevelopmentally impaired group (NIC), as well as children who do not have developmental problems, referred to as the subcohort.

Data collection methods consist of the following: (1) Medical record review of

the child participant; (2) medical record review of the biological mother of the child participant; (3) packets sent to the participants with self-administered questionnaires and a buccal swab kit; (4) a telephone interview focusing on pregnancy-related events and early life history (biological mother and/or primary caregiver interview); (5) a child development evaluation (more comprehensive for case participants than for the control group participants); (6) parent child development interview (for case participants only) administered over the telephone or in-person; (7) a physical exam of the child participant; (8) biological sampling of the child participant (blood and hair); and, (9) biological sampling of the biological parents of the child participant (blood only). Minor changes to some of the self administered questionnaires and the telephone interview include clarification of instructions to the respondent and clarifying specific questions to make the instruments easier to complete and further improve data quality.

There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
1. Initial Contact by Mail	9,252	1	10/60	1,542
2. Invitation Telephone Contact	3,886	1	20/60	1,295
3. Self-administered Questionnaires and buccal sample	1,749	1	3	5,247
4. Caregiver Interview by telephone	1,434	1	1.5	2,151
5. Child Clinic Visit (Child Development Evaluation, physical exam, and biosamples)	1,329			
Case	443	1	2	886
NIC	443	1	2	886
Subcohort	443	1	2	886
6. Parent Child Development Interview (Case participants only)	414	1	3	1,242
7. Parent biosamples	1,242	1	15/60	311
Total				14,446

Dated: September 2, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9-21675 Filed 9-4-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service Customer Satisfaction Survey

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 60-day advance opportunity for public

comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection: Title: 0917-NEW, "Indian Health Service Customer Satisfaction Survey." *Type of Information Collection Request:* Three-year approval of this new information collection, 0917-NEW, "Indian Health Service Customer Satisfaction Survey." *Form(s):* Tribal Homeowner Survey, Tribal Partner Survey, Annual Operator Operation and Maintenance (O&M)

Survey, and Post Construction O&M Survey. *Need and Use of Information Collection:* The IHS goal is to raise the health status of the American Indian and Alaska Native people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission, the Sanitation Facilities Construction Program (SFCP) provides technical and financial assistance to American Indian Tribes and Alaska Native villages for cooperative development and continued operation of safe water, wastewater, and solid waste systems and related support facilities.

The IHS of Environmental Health and Engineering (OEHE), SFCP “Customer

Satisfaction Surveys,” will provide the information needed to complete these goals. With the information collected from Tribal homeowners, Tribal leaders, and Tribal operation and maintenance operators, the Sanitation facilities programs will make improvements that will result in improved quality of services.

Voluntary customer satisfaction surveys will be conducted through phone calls, mail, and the Internet. The information gathered will be used by agency management and staff to identify strengths and weaknesses in current service provision, to plan and redirect resources, to make improvements that are practical and feasible, and to provide vital feedback to partner

agencies, Tribal leaders, system operators, health boards, and community members regarding customer satisfaction or dissatisfaction with the *SFCP. Affected Public:* Individuals. *Type of Respondents:* Tribal homeowners, Tribal leaders, and Tribal operation and maintenance operators.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hours per response, and Total annual burden hour(s).

Data collection instrument(s)	Number of respondents	Responses per respondent	Total annual response	Burden hours per response*	Annual burden hours
Tribal Homeowner Survey	1,300	1	1,300	3	65
Tribal Partner Survey	175	1	175	3	8.75
Annual Operator O&M Survey	125	1	125	3	6.25
Post Construction O&M Survey	200	1	200	3	10
Total	1,800	90

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Ms. Betty Gould, Reports Clearance Officer, 801 Thompson Ave., TMP, Suite 450, Rockville, MD 20852-1601; call (301) 443-7899; send via facsimile to (301) 443-2316; or send your e-mail requests,

comments, and return address to: *Betty.Gould@ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

Dated: August 28, 2009.
Yvette Roubideaux,
Director, Indian Health Service.
 [FR Doc. E9-21419 Filed 9-4-09; 8:45 am]
BILLING CODE 4165-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Project: Adult Treatment Drug Court Cross-Site Evaluation for the Substance Abuse and Mental Health Services Administration (SAMHSA)—NEW

SAMHSA’s Center for Substance Abuse Treatment (CSAT) is responsible for collecting data from 20 recently funded Adult Treatment Drug Court grantees and clients being served by expansion and/or enhancement grants. The main evaluation question is whether the addition of substance abuse treatment resources increases the positive results of drug courts. SAMHSA’s CSAT-funded grantees are required to participate in a cross-site evaluation as a contingency of their award. Data on each drug court and their processes will be collected during three annual site visits. Some data will be obtained through courtroom observations; no questionnaire will be administered to collect observational data. Additional data will be collected through interviews with drug court personnel and focus groups and interviews with drug court clients.

CSAT requests approval for administering questionnaires to drug court personnel. CSAT also requests approval for conducting focus groups with drug court clients and administering questionnaires at 6-months post-discharge from the drug court.

Drug Court Team Questionnaire

This questionnaire will be administered to key drug court personnel (e.g., judge, drug court manager and treatment provider) during the three annual site visits to the drug court. This instrument consists of 15 open-ended questions, and will ask respondents about their role and involvement in the drug court process, perceptions of drug courts, and the role of treatment and coercion in drug courts (subject to OMB approval).

Drug Court Client Focus Group Questions for Guided Discussion

Focus groups will be conducted during the annual site visits to each drug court. During the focus groups, drug court clients will be asked 12 open-ended questions about their experiences in the drug court program and current efforts towards recovery. Drug court participants will be involved in focus groups on 1 to 3 occasions.

Procedural Justice Questionnaire

This instrument contains 13 items and asks drug court clients about their perceptions regarding fair treatment by the judge and drug court team during the drug court process. It is hypothesized that participants who

perceive the judge and drug court team as fair will be more compliant with the drug court program, more likely to graduate, and have better substance use and criminal behavior outcomes (e.g., reduced substance use, fewer arrests). This questionnaire will be administered to drug court participants once, during the 6-month post-discharge interview.

Correctional Mental Health Screener for Women

A mental health screener for women (CMHS-W) will be administered to gather data on drug court participants' mental health. Many drug court clients have co-occurring disorders (i.e., substance use and mental health disorders). The information gathered during this portion of the in-person drug court client interviews will provide a post-discharge indicator of mental health status and will be used as a moderator variable when assessing client outcomes such as drug use and arrest. This questionnaire will be administered to drug court participants once, during the 6-month post-discharge interview. The CMHS-W contains eight questions, and six items are common between the men and women's versions of the instrument.

Correctional Mental Health Screener for Men

A mental health screener for men (CMHS-M) will be administered to gather data on drug court participants' mental health. Many drug court clients have co-occurring disorders (i.e., substance use and mental health disorders). The information gathered during this portion of the in-person drug court client interviews will provide a post-discharge indicator of mental health status and will be used as a moderator variable when assessing client outcomes such as drug use and arrest. This questionnaire will be administered to drug court participants once, during the 6-month post-discharge interview. The CMHS-M contains twelve questions and the two instruments have six items in common.

Treatment Satisfaction Index

The Treatment Satisfaction Index will ask drug court participants about their satisfaction with treatment received during the drug court program. This 19-item questionnaire will be administered to drug court participants once, during the 6-month post-discharge interview.

The estimated response burden for this data collection is provided in the table below:

ANNUALIZED ESTIMATES OF HOUR BURDEN

	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Drug court team questionnaire	240	3	720	.5	120
Drug court clients focus group questions for guided discussion	600	1	600	1.0	600
Drug court clients—interviews	816	1	816	.5	408
Procedural justice questionnaire	816	1	816	.09	73
Correctional mental health screener—women	408	1	408	.08	33
Correctional mental health screener—men	408	1	408	.08	33
Treatment satisfaction index	816	1	816	.08	65
Total	1,656	2,136	1,128

The estimates in this table reflect the maximum burden for participation in the Adult Treatment Drug Court Cross-Site Evaluation. Burden for drug court personnel is aggregated to reflect total burden over the three-year study period. The drug court personnel questionnaire will be administered three times; once during each of three study years. Burden for the drug court clients is annualized. Focus groups and interviews are one-time events. Some drug court clients will participate in both a focus group and 6-month post-discharge interview.

Written comments and recommendations concerning the proposed information collection should

be sent by October 8, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202-395-5806.

Dated: August 28, 2009.
Elaine Parry,
Director, Office of Program Services.
 [FR Doc. E9-21511 Filed 9-4-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2004-N-0451] (formerly Docket No. 2004N-0226)

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 022

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled “Modifications to the List of Recognized Standards, Recognition List Number: 022” (Recognition List Number: 022), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of “Modifications to the List of Recognized Standards, Recognition List Number: 022” to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–847–8149. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: standards@cdrh.fda.gov. This document may also be accessed on FDA’s Internet site at <http://www.access.data.fda.gov/scripts/cdrh/cfdocs/cfTopic/cdrhnew.cfm>. See section VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 022 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 3632, Silver Spring, MD 20993–0002, 301–796–6574.

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 of the act allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled “Recognition and Use of Consensus Standards.” The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, are identified in table 1 of this document.

TABLE 1.—FEDERAL REGISTER CITATION

February 25, 1998 (63 FR 9561)	May 27, 2005 (70 FR 30756)
October 16, 1998 (63 FR 55617)	November 8, 2005 (70 FR 67713)
July 12, 1999 (64 FR 37546)	March 31, 2006 (71 FR 16313)
November 15, 2000 (65 FR 69022)	June 23, 2006 (71 FR 36121)
May 7, 2001 (66 FR 23032)	November 3, 2006 (71 FR 64718)
January 14, 2002 (67 FR 1774)	May 21, 2007 (72 FR 28500)
October 2, 2002 (67 FR 61893)	September 12, 2007 (72 FR 52142)
April 28, 2003 (68 FR 22391)	December 19, 2007 (72 FR 71924)
March 8, 2004 (69 FR 10712)	September 9, 2008 (73 FR 52358)

TABLE 2.

Old Recognition No.	Replacement Recognition No.	Standard	Change
A. Anesthesia			
1–37	1–80	CGA C–9:2004 (Reaffirmed 2008) Standard Color Marking of Compressed Gas Containers for Medical Use	Withdrawn and replaced with newer version

TABLE 1.—FEDERAL REGISTER CITATION—Continued

June 18, 2004 (69 FR 34176)	March, 18, 2009 (74 FR 11586)
October 4, 2004 (69 FR 59240)	

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains “hypertext markup language (HTML)” and “portable document format (PDF)” versions of the list of “FDA Recognized Consensus Standards.” Both versions are publicly accessible at the agency’s Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 022

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the agency’s searchable database. FDA will use the term “Recognition List Number: 022” to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
1-68	1-81	CGA V-5:2008 Diameter-Index Safety System Noninterchangeable Low Pressure Connections for Medical Gas Applications	Withdrawn and replaced with newer version
1-51		ASTM F1100-90 (1997) Standard Specification for Ventilators Intended for Use in Critical Care	Withdrawn
1-59		ASTM F1456-01 Standard Specification for Minimum Performance and Safety Requirements for Capnometers	Withdrawn
B. Biocompatibility			
2-64		ANSI/AAMI/ISO 10993-5:1999 Biological Evaluation of Medical Devices—Part 5: Tests for In Vitro Cytotoxicity	Contact person, Extent of recognition and Relevant guidance
2-82		ASTM F2147-01 Standard Practice for Guinea Pig: Split Adjuvant and Closed Patch Testing for Contact Allergens	Contact person and Extent of recognition
2-83	2-136	ASTM E1262-88 (Reapproved 2008) Standard Guide for Performance of Chinese Hamster Ovary Cell/Hypoxanthine Guanine Phosphoribosyl Transferase Gene Mutation Assay	Withdrawn and replaced with newer version
2-84	2-137	ASTM E1263-97 (Reapproved 2008) Standard Guide for Conduct of Micro-nucleus Assays in Mammalian Bone Marrow Erythrocytes	Withdrawn and replaced with newer version
2-85	2-138	ASTM E1280-97 (Reapproved 2008) Standard Guide for Performing the Mouse Lymphoma Assay for Mammalian Cell Mutagenicity	Withdrawn and replaced with newer version
2-87		ISO 10993-10:2002 Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Delayed-type Hypersensitivity	Extent of recognition and Relevant guidance
2-90	2-139	ASTM E1397-91 (Reapproved 2008) Standard Practice for In Vitro Rat Hepatocyte DNA Repair Assay	Withdrawn and replaced with newer version
2-91	2-140	ASTM E1398-91 (Reapproved 2008) Standard Practice for In Vivo Rat Hepatocyte DNA Repair Assay	Withdrawn and replaced with newer version
2-93		ASTM F763-04 Standard Practice for Short-Term Screening of Implant Materials	Extent of recognition and Contact person
2-94		ASTM F981-04 Standard Practice for Assessment of Compatibility of Bio-materials for Surgical Implants with Respect to Effect of Materials on Muscle and Bone	Extent of recognition and Contact person
2-95	2-141	ASTM F1984-99 (Reapproved 2008) Standard Practice for Testing for Whole Complement Activation in Serum by Solid Materials	Withdrawn and replaced with newer version
2-97	2-142	ASTM F1983-99 (Reapproved 2008) Standard Practice for Assessment of Compatibility of Absorbable/Resorbable Biomaterials for Implant Applications	Withdrawn and replaced with newer version
2-98		ANSI/AAMI/ISO 10993-1:2003 Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing	Title, Extent of recognition, Relevant guidance and Contact person
2-99	2-143	ASTM F1904-98 (Reapproved 2008) Standard Practice for Testing the Biological Responses to Particles in vivo	Withdrawn and replaced with newer version
2-100		ASTM E1372-95 (Reapproved 2003) Standard Test Method for Conducting a 90-Day Oral Toxicity Study in Rats	Contact person
2-106	2-144	ASTM F619-03 (Reapproved 2008) Standard Practice for Extraction of Medical Plastics	Withdrawn and replaced with newer version
2-108		ASTM F1905-98(2003) Standard Practice for Selecting Tests for Determining the Propensity of Materials to Cause Immunotoxicity	Contact person and Extent of recognition
2-114		ASTM F1877-05 Standard Practice for Characterization of Particles	Extent of recognition and Contact person

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
2-115		ASTM F895-84 (Reapproved 2006) Standard Test Method for Agar Diffusion Cell Culture Screening for Cytotoxicity	Extent of recognition, Relevant guidance and Contact person
2-116	2-145	ASTM F1439-03 (Reapproved 2008) Standard Guide for Performance of Lifetime Bioassay for the Tumorigenic Potential of Implant Materials	Withdrawn and replaced with newer version
2-118		ANSI/AAMI/ISO 10993-11:2006 Biological Evaluation of Medical Devices—Part 11: Tests for Systemic Toxicity	Extent of recognition, Relevant guidance and Contact person
2-119		ASTM F813-07 Standard Practice for Direct Contact Cell Culture Evaluation of Materials for Medical Devices	Contact person
2-121	2-146	ASTM F2148-07€1 Standard Practice for Evaluation of Delayed Contact Hypersensitivity Using the Murine Local Lymph Node Assay (LLNA)	Withdrawn and replaced with newer version
2-122		ASTM F719-81 (Reapproved 2007)€1 Standard Practice for Testing Biomaterials in Rabbits for Primary Skin Irritation	Contact person and Relevant guidance
2-124		ASTM F750-87 (Reapproved 2007)€1 Standard Practice for Evaluating Material Extracts by Systemic Injection in the Mouse	Extent of recognition, Relevant guidance and Contact person
2-125		ASTM F749-98 (Reapproved 2007)€1 Standard Practice for Evaluating Material Extracts by Intracutaneous Injection in the Rabbit	Extent of recognition, Relevant guidance and Contact person
2-126		ASTM F748-06 Standard Practice for Selecting Generic Biological Test Methods for Materials and Devices	Extent of recognition, Relevant guidance and Contact person
2-128	2-147	USP 32-NF26 Biological Tests <87> 2009 Biological Reactivity Test, In Vitro—Direct Contact Test	Withdrawn and replaced with newer version
2-129	2-148	USP 32-NF26 Biological Tests <88> Biological Reactivity Test, In Vitro—Elution Test	Withdrawn and replaced with newer version
2-130	2-149	USP 32-NF26 Biological Tests <88> Biological Reactivity Tests, In Vivo Procedure—Preparation of Sample	Withdrawn and replaced with newer version
2-131	2-150	USP 32-NF26 Biological Tests <88> Biological Reactivity Test, In Vivo, Classification of Plastics—Intracutaneous Test	Withdrawn and replaced with newer version
2-132	2-151	USP 32-NF26 Biological Tests <88> Biological Reactivity Tests, In Vivo, Classification of Plastics—Systemic Injection Test	Withdrawn and replaced with newer version
2-133		ASTM F1408-97 (Reapproved 2008) Standard Practice for Subcutaneous Screening Test for Implant Materials	Contact person
2-134		ASTM F2065-00 (2006) Standard Practice for Testing for Alternative Pathway Complement Activation in Serum by Solid Materials	Contact person
2-135		AAMI/ANSI/ISO 10993-12:2007 Biological Evaluation of Medical Devices—Part 12: Sample Preparation and Reference Materials	Extent of recognition, Relevant guidance and Contact person
C. Dental/ENT			
4-69	4-178	ISO 6872:2008 Dentistry—Ceramic Materials	Withdrawn and replaced with newer version
4-73	4-179	ISO 7405: 2008 Dentistry—Evaluation of Biocompatibility of Medical Devices Used in Dentistry	Withdrawn and replaced with newer version
4-175		ANSI ASA S3.46-1997 (R 2007) Methods of Measurement of Real-Ear Performance Characteristics of Hearing Aids	Reaffirmation
D. General			

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
5-12	5-47	ISO 10012:2003 Measurement Management Systems—Requirements for Measurement Processes and Measuring Equipment	Withdrawn and replaced with newer version
5-15	5-48	ANSI/ASQ Z1.9-2008 Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming	Withdrawn and replaced with newer version
5-27		IEC 60601-1-1 Ed. 2.0 2000 Medical Electrical Equipment—Part 1-1: General Requirements for Safety—Collateral Standard: Safety requirements for Medical Electrical Systems	Title
5-36		ISO/TR 16142:2006 Medical Devices—Guidance on the Selection of Standards in Support of Recognized Essential Principles of Safety and Performance of Medical Devices	Title
5-41		IEC 60601-1-4 (2000) Consol. Ed. 1.1 Medical Electrical Equipment—Part 1-4: General Requirements for Safety—Collateral Standard: Programmable Electrical Medical Systems	Title
5-44	5-49	IEC 60601-1-8, Ed. 1 Medical Electrical Equipment—Part 1-8: General Requirements for Safety—Collateral Standard: Alarm Systems—Requirements, Tests and Guidelines—General Requirements and Guidelines for Alarm Systems in Medical Equipment	Withdrawn and re-recognized previous version
E. General Hospital/General Plastic Surgery			
6-63	6-216	ISO 8536-7:2009 Infusion Equipment for Medical Use—Part 7: Caps Made of Aluminum-plastics Combinations for Infusion Bottles	Withdrawn and replaced with newer version
6-112		ANSI/AAMI PB70:2003 Liquid Barrier Performance and Classification of Protective Apparel and Drapes Intended for Use in Health Care Facilities	Contact person
6-118		ASTM F2196-02 Standard Specification for Circulating Liquid and Forced Air Patient Temperature Management Devices	CFR citation and product code
6-144		ASTM D5712-05€1 Standard Test Method for Analysis of Aqueous Extractable Protein in Natural Rubber and Its Products Using the Modified Lowry Method	Title and Contact person
6-145		ASTM D3578-05€1 Standard Specification for Rubber Examination Gloves	Title and Contact person
6-147		ASTM D6978-05 Standard Practice for Assessment of Resistance of Medical Gloves to Permeation by Chemotherapy Drugs	Contact person and Relevant guidance
6-149		ASTM D7160-05 Standard Practice for Determination of Expiration Dating for Medical Gloves	Contact person
6-150		ASTM D7161-05 Standard Practice for Determination of Real Time Expiration Dating of Mature Medical Gloves Stored Under Typical Warehouse Conditions	Contact person
6-165		ASTM D6977-04€1 Standard Specification for Polychloroprene Examination Gloves for Medical Application	Title and Contact person
6-167		ASTM D6319-00a (Reapproved 2005)€1 Standard Specification for Nitrile Examination Gloves for Medical Application	Title and Contact person
6-168		ASTM D3577-09€1 Standard Specification for Rubber Surgical Gloves	Withdrawn and replaced with newer version
6-175		ASTM D5151-06 Standard Test Method for Detection of Holes in Medical Gloves	Contact person
6-178		ASTM D6124-06 Standard Test Method for Residual Powder on Medical Gloves	Contact person
6-183		ASTM D5250-06€1 Standard Specification for Poly(vinyl chloride) Gloves for Medical Application	Title and Contact person
6-186	6-217	ASTM F1670-08 Standard Test Method for Resistance of Materials Used in Protective Clothing to Penetration by Synthetic Blood	Withdrawn and replaced with newer version

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
6-205	6-218	USP 32:2009 Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version
6-206	6-219	USP 32<11>:2009 Sterile Sodium Chloride for Irrigation	Withdrawn and replaced with newer version
6-207	6-220	USP 32:2009 Absorbable Surgical Suture	Withdrawn and replaced with newer version
6-208	6-221	USP 32<881>:2009 Tensile Strength	Withdrawn and replaced with newer version
6-209	6-222	USP 32<861>:2009 Sutures—Diameter	Withdrawn and replaced with newer version
6-210	6-223	USP 32<871>:2009 Sutures Needle Attachment	Withdrawn and replaced with newer version
6-211	6-224	USP 32<11>:2009 Sterile Water for Irrigation	Withdrawn and replaced with newer version
6-212	6-225	USP 32<11>:2009 Heparin Lock Flush Solution	Withdrawn and replaced with newer version
6-213	6-226	USP 32<11>:2009 Sodium Chloride Injection	Withdrawn and replaced with newer version
F. In Vitro Diagnostics			
7-156	7-195	CLSI M02–A10, Performance Standards for Antimicrobial Disk Susceptibility Tests	Withdrawn and replaced with newer version
7-158	7-196	CLSI M07–A8, Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria that Grow Aerobically	Withdrawn and replaced with newer version
7-160	7-197	CLSI M35–A2, Abbreviated Identification of Bacteria and Yeast	Withdrawn and replaced with newer version
7-78	7-198	CLSI M23–A3, Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters	Withdrawn and replaced with newer version
7-177	7-199	CLSI M100–S19 Performance Standards for Antimicrobial Susceptibility Testing	Withdrawn and replaced with newer version
7-161	7-200	CLSI M48–A, Laboratory Detection and Identification of Mycobacteria	Withdrawn and replaced with newer version
7-102		NCCLS H1–A5, Tubes and Additives for Venous Blood Specimen Collection	Contact Person
7-101		NCCLS H51–A, Assays of vonWillebrand Factor Antigen and Ristocetin Co-factor Activity	Contact Person
7-165		CLSI H20–A2, Reference Leukocyte (WBC) Differential Count (Proportional) and Evaluation of Instrumental Methods	Contact Person
7-103	7-201	CLSI H3–A6, Procedures for the Collection of Diagnostic Blood Specimens by Venipuncture	Withdrawn and replaced with newer version
7-81	7-202	CLSI C28–A3 Defining, Establishing, and Verifying Reference Intervals in the Clinical Laboratory	Withdrawn and replaced with newer version
7-144	7-203	CLSI H04–A6, Procedures and Devices for the Collection of Diagnostic Capillary Blood Specimens	Withdrawn and replaced with newer version
G. Materials			
8-32	8-163	ASTM F1586–08 Standard Specification for Wrought Nitrogen Strengthened 21 Chromium-10Nickel-3Manganese-2.5Molybdenum Stainless Steel Bar for Surgical Implants (UNS S31675)	Withdrawn and replaced with newer version

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
8-44	8-164	ASTM F136-08€1 Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy for Surgical Implant Applications (UNS R56401)	Withdrawn and replaced with newer version
8-49	8-165	ASTM F1058-08 Standard Specification for Wrought 40Cobalt-20Chromium-16Iron-15Nickel-7Molybdenum Alloy Wire and Strip for Surgical Implant Applications (UNS R30003 and UNS R30008)	Withdrawn and replaced with newer version
8-50	8-166	ASTM F1091-08 Standard Specification for Wrought Cobalt-20 Chromium-15 Tungsten-10 Nickel Alloy Surgical Fixation Wire (UNS R30605)	Withdrawn and replaced with newer version
8-52	8-167	ASTM F1350-08 Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673)	Withdrawn and replaced with newer version
8-53	8-168	ASTM F1472-08€1 Standard Specification for Wrought Titanium -6Aluminum -4Vanadium Alloy for Surgical Implant Applications (UNS R56400)	Withdrawn and replaced with newer version
8-76	8-169	ASTM F138-08 Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants (UNS S31673)	Withdrawn and replaced with newer version
8-79	8-170	ASTM F961-08 Standard Specification for 35Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Forgings for Surgical Implants (UNS R30035)	Withdrawn and replaced with newer version
8-81	8-171	ASTM F1609-08 Standard Specification for Calcium Phosphate Coatings for Implantable Materials	Withdrawn and replaced with newer version
8-86	8-172	ASTM F1926/F1926M-08 Standard Test Method for Evaluation of the Environmental Stability of Calcium Phosphate Granules, Fabricated Forms, and Coatings	Withdrawn and replaced with newer version
8-94	8-173	ASTM F601-03 (Reapproved 2008) Standard Practice for Fluorescent Penetrant Inspection of Metallic Surgical Implants	Withdrawn and replaced with newer version
8-95	8-174	ASTM F629-02 (Reapproved 2007)€1 Standard Practice for Radiography of Cast Metallic Surgical Implants	Withdrawn and replaced with newer version
8-110	8-175	ASTM F1377-08 Standard Specification for Cobalt-28 Chromium-6 Molybdenum Powder for Coating of Orthopedic Implants (UNS R30075)	Withdrawn and replaced with newer version
8-118	8-176	ASTM F2503-08 Standard Practice for Marking Medical Devices and Other Items for Safety in the Magnetic Resonance Environment	Withdrawn and replaced with newer version
8-133	8-177	ASTM F2129-08 Standard Test Method for Conducting Cyclic Potentiodynamic Polarization Measurements to Determine the Corrosion Susceptibility of Small Implant Devices	Withdrawn and replaced with newer version
8-143	8-178	ASTM F648-07€1 Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	Withdrawn and replaced with newer version
8-144	8-179	ASTM F754-08 Standard Specification for Implantable Polytetrafluoroethylene (PTFE) Sheet, Tube, and Rod Shapes Fabricated from Granular Molding Powders	Withdrawn and replaced with newer version
8-146	8-180	ASTM F2066-08 Standard Specification for Wrought Titanium-15 Molybdenum Alloy for Surgical Implant Applications (UNS R58150)	Withdrawn and replaced with newer version
8-148	8-181	ASTM F899-09 Standard Specification for Wrought Stainless Steels for Surgical Instruments	Withdrawn and replaced with newer version
8-152	8-182	ASTM F1537-08 Standard Specification for Wrought Cobalt-28-Chromium-6-Molybdenum Alloys for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539)	Withdrawn and replaced with newer version
8-160	8-183	ASTM F560-08 Standard Specification for Unalloyed Tantalum for Surgical Implant Applications (UNS R05200, UNS R05400)	Withdrawn and replaced with newer version

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
8–161	8–184	ASTM F2516–07€2 Standard Test Method for Tension Testing of Nickel-Titanium Superelastic Materials	Withdrawn and replaced with newer version
8–162	8–185	ASTM F451–08 Standard Specification for Acrylic Bone Cement	Withdrawn and replaced with newer version
H. OB-GYN/Gastroenterology			
9–34		ISO 4074:2002/Cor.1:2003(E);, Natural Latex Rubber Condoms—Requirements and Test Methods, Technical Corrigendum 1	Relevant guidance
9–41	9–58	ASTM D6324–08 Standard Test Methods for Male Condoms Made from Polyurethane	Withdrawn and replaced with newer version
9–43		ISO 16038:2005 Rubber condoms—Guidance on the Use of ISO 4074 in the Quality Management of Natural Rubber Latex Condoms	Relevant guidance
9–56		ASTM D3492–08 Standard Specification for Rubber Contraceptives (Male Condoms)	Relevant guidance
9–57		ISO 4074:2002/Cor.2:2008(E) Natural Latex Rubber Condoms—Requirements and Test Methods, Technical Corrigendum 2	Relevant guidance
I. Orthopedics			
11–172	11–211	ASTM F1798–97 (Reapproved 2008) Standard Guide for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Sub-assemblies Used in Spinal Arthrodesis Implants	Withdrawn and replaced with newer version
11–178	11–212	ASTM F1440–92 (Reapproved 2008) Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components Without Torsion	Withdrawn and replaced with newer version
11–192	11–213	ASTM F1223–08 Standard Test Method for Determination of Total Knee Replacement Constraint	Withdrawn and replaced with newer version
11–198	11–214	ASTM F0382–99 (Reapproved 2008) Standard Specification and Test Method for Metallic Bone Plates	Withdrawn and replaced with newer version
11–204	11–215	ASTM F897–02 (Reapproved 2007) Standard Test Method for Measuring Fretting Corrosion of Osteosynthesis Plates and Screws	Withdrawn and replaced with newer version
11–205	11–216	ASTM F1264–03 (Reapproved 2007)€1 Standard Specification and Test Methods for Intramedullary Fixation Devices	Withdrawn and replaced with newer version
11–209	11–217	ASTM F2083–08€1 Standard Specification for Total Knee Prosthesis	Withdrawn and replaced with newer version
J. Radiology			
12–17	12–192	NEMA MS 8–2008 Characterization of the Specific Absorption Rate for Magnetic Resonance Imaging Systems	Withdrawn and replaced with new version
12–48	12–193	AIUM AOL 2008 Acoustic Output Labeling Standard for Diagnostic Ultrasound Equipment Revision 1- A Standard for How Manufacturers Should Specify Acoustic Output Data	Withdrawn and replaced with newer version
12–58	12–194	ANSI/HPS N43.6–2007 Sealed Radioactive Sources—Classification	Withdrawn and replaced with newer version
12–69	12–195	NEMA MS 6–2008 Determination of Signal-to-Noise Ratio and Image Uniformity for Single-Channel Non-Volume Coils in Diagnostic MR Imaging	Withdrawn and replaced with newer version
12–95	12–196	NEMA MS 2–2008 Determination of Two-Dimensional Geometric Distortion in Diagnostic Magnetic Resonance Images	Withdrawn and replaced with newer version
12–100		NEMA UD 3–2004 Standard for Real Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment	Contact person

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
12-105		NEMA UD 2-2004 Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment Version 3	Contact person
12-139		AIUM AOMS-2004 Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment	Title and Contact person
12-140		AIUM RTD1-2004 Standard for Real-Time Display of Thermal and Mechanical Acoustic Output Indices on Diagnostic Ultrasound Equipment Revision 1	Title and Contact person
12-146		IEC 60601-2-17 (2004) Medical Electrical Equipment—Part 2-17: Particular Requirements for the Safety of Automatically-controlled Brachytherapy Afterloading Equipment	Title
12-147		IEC 60601-2-5: (2000) Medical Electrical Equipment—Part 2-5: Particular Requirements for the Safety of Ultrasonic Physiotherapy Equipment Ed. 2.0	Title
12-169	12-197	IEC 60601-2-22 (1995) Medical Electrical Equipment—Part 2-22: Particular Requirements for Basic Safety and Essential Performance of Surgical, Cosmetic, Therapeutic and Diagnostic Laser Equipment—Edition 2.0	Withdrawn and re-recognized previous version
12-178		IEC 60601-2-45 Ed. 2.0, (2001), Medical electrical equipment—Part 2-45: Particular requirements for the safety of mammographic X-ray equipment and mammographic stereotactic devices	Title
12-182	12-198	IEC 60601-2-37 (2004), (2005) Amendment 2, Medical Electrical Equipment—Part 2-37: Particular Requirements for the Safety of Ultrasonic Medical Diagnostic and Monitoring Equipment	Withdrawn and re-recognized previous version
12-185	12-199	IEC 60601-1-3: 1994 Medical Electrical Equipment—Part 1: General Requirements for Safety 3. Collateral Standard: General Requirements for Radiation Protection in Diagnostic X-ray Equipment—First Edition	Withdrawn and re-recognize previous version
12-186	12-200	IEC 60601-2-29 (1999) Medical Electrical Equipment Part 2-29: Particular Requirements for the Safety of Radiotherapy Simulators—Second Edition	Withdrawn and re-recognized previous version
K. Software/Informatics			
13-16	13-29	CLSI LIS01-A2 Specification for Low-Level Protocol to Transfer Messages Between Clinical Laboratory Instruments and Computer Systems	Withdrawn and replaced with newer version
L. Sterility			
14-55		ANSI/AAMI/ISO 14160:1998/(R) 2008 Sterilization of Single-use Medical Devices Incorporating Materials of Animal Origin—Validation and Routine Control of Sterilization by Liquid Chemical Sterilants	Reaffirmation
14-88		ANSI/AAMI/ ISO 14937:2000 Sterilization of Health Care Products—General Requirements for Characterization of a Sterilizing Agent and the Development, Validation, and Routine Control of a Sterilization Process for Medical Devices.	Contact person
14-116		ANSI/AAMI ST72:2002 Bacterial Endotoxins—Test Methodologies, Routine Monitoring, and Alternatives to Batch Testing	Relevant guidance and Extent of recognition
14-135		ANSI/AAMI ST63:2002 Sterilization of Health Care Products—Requirements for the Development, Validation, and Routine Control of an Industrial Sterilization Process for Medical Devices—Dry Heat	Relevant Guidance
14-164		ANSI/AAMI ST81:2004 Sterilization of Medical Devices—Information to be Provided by the Manufacturer for the Processing of Resterilizable Medical Devices	Contact Person
14-195		ANSI/AAMI/ISO 11140-1:2005 Sterilization of Health Care Products—Chemical Indicators—Part 1: General Requirements	Relevant Guidance, Extent of Recognition and Contact person

TABLE 2.—Continued

Old Recognition No.	Replacement Recognition No.	Standard	Change
14-220	14-263	ANSI/AAMI ST79:2006/A1:2008 Comprehensive Guide to Steam Sterilization and Sterility Assurance in Health Care Facilities	Withdrawn and replaced with newer version
14-223		ANSI/AAMI/ISO 11138-1:2006 Sterilization of Health Care Products—Biological Indicators—Part 1: General Requirements	Relevant Guidance
14-224		ANSI/AAMI/ISO 11137-1:2006 Sterilization of Health Care Products—Radiation—Part 1: Requirements for Development, Validation, and Routine Control of a Sterilization Process for Medical Devices	Relevant Guidance
14-225		ANSI/AAMI/ISO 11137-2:2006 Sterilization of Health Care Products—Radiation—Part 2: Establishing the Sterilization Dose	Relevant Guidance
14-226		ANSI/AAMI/ISO 11137-3:2006 Sterilization of Health Care Products—Radiation—Part 3: Guidance on Dosimetric Aspects	Relevant Guidance
14-228		ANSI/AAMI/ISO 11135-1:2007 Sterilization of Health Care Products—Ethylene oxide—Part 1: Requirements for Development, Validation, and Routine Control of a Sterilization Process for Medical Devices	Relevant Guidance
14-261		ANSI/AAMI/ISO 17665-1:2006 Sterilization of Health Care Products—Moist Heat—Part 1: Requirements for the Development, Validation, and Routine Control of a Sterilization Process for Medical Devices	Relevant Guidance
14-119		ANSI/AAMI ST55:2003/(R)2008 Table-top Steam Sterilizers	Reaffirmation
14-71	14-264	ANSI/AAMI ST8:2008 Hospital Steam Sterilizers	Withdrawn and replaced with newer version
14-249	14-265	USP 32:2009 <61> Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests	Withdrawn and replaced with newer version
14-250	14-266	USP 32:2009 <71> Sterility Tests	Withdrawn and replaced with newer version
14-251	14-267	USP 32:2009 <85> Bacterial Endotoxins Test	Withdrawn and replaced with newer version
14-252	14-268	USP 32:2009 <151> Pyrogen Test (USP Rabbit Test)	Withdrawn and replaced with newer version
14-253	14-269	USP 32:2009 <161> Transfusion and Infusion Assemblies and Similar Medical Devices	Withdrawn and replaced with newer version
14-254	14-270	USP 32:2009 Biological Indicator for Steam Sterilization—Self Contained	Withdrawn and replaced with newer version
14-246	14-271	USP 32:2009 Biological Indicator for Dry-Heat Sterilization, Paper Carrier	Withdrawn and replaced with newer version
14-247	14-272	USP 32:2009 Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier	Withdrawn and replaced with newer version
14-248	14-273	USP 32:2009 Biological Indicator for Steam Sterilization, Paper Carrier	Withdrawn and replaced with newer version
14-238		ANSI/AAMI/ISO 11140-5:2007 Sterilization of Health Care Products—Chemical Indicators—Part 5: Class 2 Indicators for Bowie and Dick-type Air Removal Tests	Contact person and Relevant guidance
14-171	14-274	ANSI/AAMI/ISO 15882:2008 Chemical Indicators—Guidance on the Selection, Use, and Interpretation of Results	Withdrawn and replaced with newer version
14-49	14-275	ANSI/AAMI ST41:2008 Ethylene oxide Sterilization in Health Care Facilities: Safety and Effectiveness	Withdrawn and replaced with newer version
14-136		ANSI/AAMI ST67:2003/(R) 2008 Sterilization of Health Care Products—Requirements for Products Labeled “STERILE”	Reaffirmation and Relevant guidance

III. Listing of New Entries

In table 3 of this document, FDA provides the listing of new entries and

consensus standards added as modifications to the list of recognized

standards under Recognition List Number: 022.

TABLE 3.

Recognition No.	Title of Standard	Reference No. & Date
A. Biocompatibility		
2-152	Biological Evaluation of Medical Devices—Part 10: Tests for Irritation and Delayed-type Hypersensitivity Amendment 1	ISO 10993 10:2002/ Amd.1:2006(E)
B. General		
5-46	Sampling Procedures for Inspection by Attributes—Part 1: Sampling Schemes Indexed by Acceptance Quality Limit (AQL) for Lot-by-lot Inspection	ISO 2859-1:1999/Cor 1:2001
5-50	Medical Devices—Application of Usability Engineering to Medical Devices	IEC 62366:2007
C. In Vitro Diagnostics		
7-204	Reference Method for Broth Dilution Antifungal Susceptibility Testing of Yeasts	CLSI M27-A3
D. Materials		
8-186	Standard Guide for Assessment of the Ultra High Molecular Weight Polyethylene (UHMWPE) Used in Orthopedic and Spinal Devices	ASTM F 2759-09
8-187	Implants for Surgery—Hydroxyapatite—Part 1: Ceramic Hydroxyapatite	ISO 13779-1:2008(E)
8-188	Implants for Surgery—Hydroxyapatite—Part 2: Coatings of Hydroxyapatite	ISO 13779-2:2008(E)
E. Neurology		
17-8	Implants for Surgery—Active Implantable Medical Devices Part 3: Implantable Neurostimulators (Neurology)	ISO 14708-3 2008-11-15
F. OB-GYN/Gastroenterology		
9-59	Hemodialysis Systems	ANSI/AAMI RD5:2003/(R) 2008
G. Orthopedics		
11-218	Implants for surgery—Wear of Total Knee-joint Prostheses—Part 3: Loading and Displacement Parameters for Wear-testing Machines with Displacement Control and Corresponding Environmental Conditions for Test	ISO 14243-3:2004 Technical Corrigendum 1
H. Sterility		
14-276	Sterilization of Health Care Products—Moist Heat—Part 2: Guidance on the Application of ISO 17665-1	ISO/TS 17665-2:2009
14-277	Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms	USP32:2009 <62>
14-278	Biological Evaluation of Medical Devices—Part 7: Ethylene Oxide Sterilization Residuals	ANSI/AAMI/ISO 10993-7:2008
I. Tissue Engineering		
15-14	Standard Guide for Interpreting Images of Polymeric Tissue Scaffolds	ASTM F2603-06
15-15	Standard Test Method for Determining the Chemical Composition and Sequence in Alginate by Proton Nuclear Magnetic Resonance (¹ H NMR) Spectroscopy	ASTM F2259-03 (Re-approved 2008)

IV. List of Recognized Standards

FDA maintains the agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/>

cfStandards/search.cfm. FDA will incorporate the modifications and minor revisions described in this document into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to

the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (See **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard; (2) any reference number and date; (3) name and address of the national or international standards development organization; (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply; and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this document announcing "Modification to the List of Recognized Standards, Recognition List Number: 022" will be available on the CDRH home page. You may access the CDRH home page at <http://www.fda.gov/cdrh>.

You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards" through the hyperlink at <http://www.fda.gov/cdrh/stdsprog.html>.

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at <http://www.fda.gov/cdrh/fedregin.html>.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Two copies of any mailed comments are to be submitted, 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. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 022. These modifications to the list or recognized standards are effective upon publication of this document in the **Federal Register**.

Dated: August 26, 2009.
Catherine M. Cook,
Associate Director for Regulation and Policy.
[FR Doc. E9-21609 Filed 9-4-09; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Capacity Building Assistance (CBA) To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for High-Risk and/or Racial/Ethnicity Minority Populations, Program Announcement Number PS09-906, Initial Review

DATES: August 28, 2009.

Correction: This notice was published in the **Federal Register** on August 6, 2009, Volume 74, Number 150, page 39333. The date on the original notice has changed.

CONTACT PERSON FOR MORE INFORMATION: Monica Farmer, M.Ed., Public Health Analyst, Strategic Science and Program Unit, Office of the Director, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop E-60, Atlanta, GA 30333. Telephone (404) 498-2277.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 25, 2009.
Elaine L. Baker,
Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.
[FR Doc. E9-21510 Filed 9-4-09; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0664]

2009 Parenteral Drug Association and Food and Drug Administration Joint Regulatory Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) in co-sponsorship with the Parenteral Drug Association (PDA), is announcing a conference entitled "Securing the Future of Medical Product Quality: A 2020 Vision." The workshop helps to achieve objectives set forth in the FDA Modernization Act of 1997, which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public.

Date and Time: The conference will be held on Monday, September 14, 2009 from 8 a.m. to 6 p.m.; Tuesday, September 15, 2009 from 7:15 a.m. to 5:45 p.m.; and Wednesday, September 16 from 7:15 a.m. to 1:15 p.m.

Location: The public workshop will be held at the Renaissance Hotel, 999 9th St., Washington, D.C., 20001; 1-202-898-9000; FAX: 1-202-289-0947.

Contact: Regarding the conference: Wanda Neal, Parenteral Drug Association, PDA Global Headquarters, Bethesda Towers, 4350 East-West Hwy., suite 200, Bethesda, MD 20814.

Regarding this document: Ken Nolan, Office of External Relations, Food and Drug Administration, 5600 Fishers Lane, rm. 15-05, Rockville, MD 20857, 301-827-3376.

Registration: You are encouraged to register at your earliest convenience. The PDA registration fees cover the cost of facilities, materials, and breaks. Seats are limited; please submit your registration as soon as possible. Conference space will be filled in order of receipt of registration. Those accepted in to the conference will receive confirmation. Registration will close after applicable conference is filled. Onsite registration will be available on a space-available basis on the day of the public conference, beginning at 7 a.m. on Monday, September 14, 2009.

The cost of registration is as follows:

PDA Members	\$1850.00
PDA Non-members	\$2099.00
Government	\$700.00
PDA Member Academic/Health Authority	\$700.00

PDA Non-Member Academic/Health Authority.	\$875.00
PDA Member Students.	\$200.00
Non-Member Students.	\$310.00

If you need special accommodations due to a disability, please contact Wanda Neal, PDA (see *Contact*), at least 7 days in advance of the workshop.

Registration instructions: To register, please submit your name, affiliation, mailing address, phone, fax number, and e-mail, along with a check or money order payable to "PDA." Mail to: PDA, Global Headquarters, Bethesda Towers, 4350 East-West Hwy., suite 200, Bethesda, MD 20814. To register via the Internet, go to the PDA Web site at <http://www.pda.org>. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The registrar will also accept payment by major credit cards (VISA/MasterCard only). For more information on the meeting, or for questions on registration, contact the Parenteral Drug Association (PDA), 301-656-5900, FAX: 301-986-1093, or e-mail: info@pda.org.

Attendees are responsible for their own accommodations. To make reservations at the Renaissance Hotel at the reduced conference rate, contact the Renaissance Hotel (see Location), citing meeting code "PDA." Room rates are: Single: \$274, plus 14.5% state and local taxes; and Double: \$274, plus 14.5% state and local taxes. Reservations can be made on a space and rate availability basis.

SUPPLEMENTARY INFORMATION: The PDA/FDA Joint Regulatory Conference offers the unique opportunity to join FDA representatives and industry experts in face-to-face dialogues. Each year, FDA speakers provide updates on the current state of efforts impacting the development of global regulatory strategies, while industry professionals from some of today's leading pharmaceutical companies present case studies on how they employ global strategies in their daily processes. Participants will hear directly from FDA experts and representatives of global regulatory authorities and take home best practices for compliance. The conference will span 2 1/2 days and cover current issues affecting the industry, including the following issues:

- Pharmaceutical safety and good manufacturing practices,
- Continual improvement,
- Technology transfer,
- Supply chain,
- Combination products,

- Recall root causes,
- Knowledge management,
- Good distribution practices and good importer practices, and
- Process validation and quality risk management.

The conference program will include PDA Interest Group sessions as well as an exhibition on September 14 and 15.

Immediately following the conference, on September 17 and 18, the PDA Training and Research Institute (PDA TRI) is offering courses to complement conference sessions.

FDA has made continuing education of the biologics, drug, and device manufacturing community a high priority to help ensure the quality of FDA-regulated pharmaceuticals and devices. The workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), as outreach activities by Government agencies to small businesses.

Dated: September 1, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9-21546 Filed 9-4-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2009-0108]

Homeland Security Advisory Council

AGENCY: The Office of Policy, DHS.

ACTION: Notice of open teleconference Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference for the purpose of reviewing the findings and recommendations of the HSAC's Homeland Security Advisory System Task Force.

DATES: The HSAC conference call will take place from 5 p.m. to 6 p.m. EST on Tuesday, September 15, 2009. Please be advised that the meeting is scheduled for one hour and all participating members of the public should promptly call-in at the beginning of the teleconference.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating in this

teleconference meeting may do so by following the process outlined below (see "Public Attendance").

Written comments must be submitted and received by September 12, 2009. Comments must be identified by DHS-2009-0108 and may be submitted by one of the following methods:

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

- **E-mail:** HSAC@dhs.gov. Include docket number in the subject line of the message.

- **Fax:** (202) 282-9207.

- **Mail:** Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0850, 245 Murray Lane, SW., Washington, DC 20528.

Instructions: All submissions received must include the words "Department of Homeland Security" and DHS-2009-0108, the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

HSAC Staff at hsac@dhs.gov or 202-447-3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The HSAC provides independent advice to the Secretary of the Department of Homeland Security to aide in the creation and implementation of critical and actionable policies and capabilities across the spectrum of homeland security operations. The HSAC periodically reports, as requested, to the Secretary, on such matters. The Federal Advisory Committee Act requires **Federal Register** publication 15 days prior to a meeting. This notice is being published 11 days prior to the meeting due to the required coordination of necessary participants and changes to schedules. All known interested parties were made aware of the meetings with sufficient time for planning purposes.

The HSAC will meet to review the Homeland Security Advisory System Task Force findings and recommendations.

Public Participation: Members of the public may register to participate in this HSAC teleconference via aforementioned procedures. Each individual must provide his or her full legal name, e-mail address and phone number no later than 5 p.m. EST on

September 10, 2009, to a staff member of the HSAC via e-mail at HSAC@dhs.gov or via phone at (202) 447-3135. HSAC conference call details will be provided to interested members of the public at this time.

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 HSAC as soon as possible.

Dated: August 31, 2009.

Becca Sharp,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. E9-21520 Filed 9-4-09; 8:45 am]

BILLING CODE 9110-9M-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-360, Revision of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I-360, Petition for Amerasian, Widow, or Special Immigrant. OMB Control No. 1615-0020.

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 25, 2009, at 74 FR 30312, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 8, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory

Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529-2210. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202-395-5806 or via e-mail at oir_submission@omb.eop.gov.

When submitting comments by e-mail, please make sure to add OMB Control No. 1615-0020 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:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow or Special Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-360. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. This information collection is used by several prospective classes of aliens who intend to establish their eligibility to immigrate to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,984 responses at 2 hours per response, 5,000 responses at 3 hours per response, and 4,700 at 2.25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 43,543 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at:

<http://www.regulations.gov/>.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529-2210, Telephone number 202-272-8377.

Dated: September 2, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9-21612 Filed 9-4-09; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2009-0775]

Towing Safety Advisory Committee; Meetings

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its working groups on the Revision of Navigation and Vessel Inspection Circular (NVIC) 04-01, and on the Inspection of Towing Vessels will meet in Martinsburg, WV. The Committee will also discuss various issues relating to shallow-draft inland and coastal waterway navigation and towing safety. All meetings will be open to the public.

DATES: The working groups will meet on Thursday, September 24, 2009, from 8 a.m. to 5 p.m. The full TSAC Committee will meet on Friday, September 25, 2009, from 8 a.m. to 3 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations at the meetings should reach the Coast Guard on or before September 15, 2009. Requests to have a copy of your material distributed to each member of the Committee or working groups should reach the Coast Guard electronically on or before September 15, 2009.

ADDRESSES: The working groups and TSAC will meet at the Coast Guard National Maritime Center; 100 Forbes Drive; Martinsburg, WV 25404; *Phone:* 304-433-3403. The nearest large commercial airport is Dulles International Airport (IAD) which is in northern VA, just west of Washington, DC. Travel into WV to the NMC will be via automobile. Information on and

directions to the NMC are on its web site at <http://www.uscg.mil/nmc>.

Send written material and requests to make oral presentations to TSAC's Assistant Designated Federal Officer (ADFO) in the **FOR FURTHER INFORMATION CONTACT** section below. This notice is available on the Internet at <http://www.regulations.gov> under the docket number USCG-2009-0775.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald P. Miente, ADFO, TSAC; U.S. Coast Guard Headquarters, CG-5221, 2100 Second Street, SW., STOP 7126, Washington, DC 20593-7126. Telephone (202) 372-1401, fax (202) 372-1926, or e-mail at: Gerald.P.Miente@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

Agenda of Meetings

NVIC 04-01 Working Group. The agenda for the working group is to discuss possible revisions to NVIC 04-01, Licensing and Manning for Officers of Towing Vessels, including the enclosures on the Towing Officer Assessment Records (TOARs). (A copy of the amended Task Statement 08-01 is available in the docket where listed under **ADDRESSES**.) The current version of the NVIC can be viewed at <http://www.uscg.mil/hq/g-m/nvic/index00.htm#2001>.

A *Sub-Working Group* will also meet to discuss licensing issues relevant to Assistance Towing and other specialty towing concerns.

Towing Vessel Inspection Working Group. The group will meet to discuss and decide on a methodology the Committee will use to review and comment on the Towing Vessel Inspection Notice of Proposed Rulemaking when it publishes in the **Federal Register**.

Towing Safety Advisory Committee. The tentative agenda for the Committee is as follows:

- (1) Update of the Towing Vessel Inspection Working Group;
- (2) Update on Commercial/Recreational Boating Interface;
- (3) Report on the Review and Recommendations for the Revision of NVIC 04-01 "Licensing and Manning for Officers of Towing Vessels;"
- (4) Report on the Review and Recommendations for the Revision of NVIC 04-01 Sub-Working Group on Assistance Towing;
- (5) Update on National Maritime Center (NMC) activities;
- (6) Update on the Towing Vessel Bridging Program; and

(7) Update on the Towing Vessel Center of Expertise.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the ADFO no later than September 15, 2009. Written material (20 copies) for distribution at a meeting should reach the Coast Guard no later than September 15, 2009. If you would like a copy of your material distributed to each member of the Committee or Working Groups in advance of a meeting, please submit it electronically to the ADFO, for e-mail distribution, no later than September 15, 2009. Also at the Chair's discretion, members of the public may present comment at the end of the Public Meeting. Please understand that the Committee's schedule may be quite demanding and time for public comment may be limited.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the ADFO as soon as possible.

Dated: September 2, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9-21566 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5285-N-29]

Notice of Proposed Information Collection: Comment Request; Neighborhood Networks Management and Tracking Data Collection Instruments

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 9, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail Lillian_L_Deitzer@HUD.gov or telephone (202) 402-8048.

FOR FURTHER INFORMATION CONTACT: Delores A. Pruden, Director, Neighborhood Networks, Office of Housing Assistance Contract Administration Oversight, Multifamily Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402-2496 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Neighborhood Networks Data Collection Management and Tracking Data Collection Instruments.

OMB Control Number, if applicable: 2502-0553.

Description of the need for the information and proposed use: The Office of Multifamily Housing Programs is requesting OMB Clearance to: (1) Update Neighborhood Networks centers' data via a semi-annual electronic postcard collection of information. This data collection will be used to update

the Neighborhood Networks contact database and HUD's *Directory of Neighborhood Networks Centers*; and (2) Enhance the Neighborhood Networks Strategic Tracking and Reporting Tool (START) including the Center Classification Tool. This information collection will continue to inform HUD of centers' progress and needs and support center directors and staff in their planning, program development, and implementation and overall performance assessment.

START allows a center to electronically create and update its business plan and center profiles, and is a necessary tool to gather quantifiable demographic information as a basis for ongoing technical assistance for center directors and staff and HUD field staff. Center classification data will ensure effectiveness in creating programs and services that promote self-sufficiency among residents of HUD Multifamily FHA-insured and -assisted housing properties.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 728 hours. The number of respondents is approximately 738; the number of responses is 1,338; the frequency of response is annually, semi annually, and on occasion; and the burden hour per response is 5.5 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 1, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E9-21581 Filed 9-4-09; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5300-N-22]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Service Coordinators in Multifamily Housing

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the

application information, deadline information and other requirements for the FY2009 Service Coordinators in Multifamily Housing NOFA.

Approximately \$90 million is made available through this NOFA, by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111-8, approved March 11, 2009), for the Service Coordinator program. Of these funds, approximately \$20 million is available for funding new Service Coordinator programs. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the Grants.gov Web site at http://apply07.grants.gov/apply/forms_apps_idx.html. A link to Grants.gov is also available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The Catalogue of Federal Domestic Assistance (CFDA) number for the Service Coordinators in Multifamily Housing program is 14.191. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the Service Coordinators in Multifamily Housing program, contact Aretha M. Williams, Housing Project Manager, Grant Policy and Management Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410; telephone number 202-402-2480 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800-877-8339.

Dated: August 20, 2009.

David H. Stevens,

Assistant Secretary of Housing—Federal Housing Commissioner.

[FR Doc. E9-21544 Filed 9-2-09; 4:15 pm]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5300-N-19]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Section 811 Housing for Persons With Disabilities (Section 811 Program)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the application information, deadline information and other requirements for the FY2009 Section 811 Supportive Housing for Persons with Disabilities (Section 811 Program). Approximately \$90.6 million in capital advance funds plus associated project rental assistance contract (PRAC) funds is made available through this NOFA, by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111-8, approved March 11, 2009) and any carryover funds available. The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the Grants.gov Web site at http://apply07.grants.gov/apply/forms_app_idx.html. A link to Grants.gov is also available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The Catalogue of Federal Domestic Assistance (CFDA) number for the Section 811 Supportive Housing for Persons with Disabilities (Section 811 Program) is 14.181. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the Section 811 Supportive Housing for Persons with Disabilities Program, contact Aretha M. Williams, Housing Project Manager, Grant Policy and Management Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410; telephone number 202-402-2480 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800-877-8339.

Dated: August 20, 2009.

David H. Stevens,

Assistant Secretary of Housing—Federal Housing Commissioner.

[FR Doc. E9-21551 Filed 9-2-09; 4:15 pm]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5300-N-21]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2009 Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the application information, deadline information and other requirements for the FY2009 Section 202 Supportive Housing for the Elderly. Approximately \$420.9 million in capital advance funds plus associated project rental assistance contract (PRAC) funds is made available through this NOFA, by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009), and any carryover funds available. This program provides funding for the development and operation of supportive housing for very low-income persons who are 62 years of age or older. Capital advance funds are to assist in the cost of developing the housing. PRAC funds will cover the difference between the HUD-approved operating costs of the project and the tenants' contributions toward rent (30 percent of their adjusted income). The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the Grants.gov Web site at http://apply.07.grants.gov/apply/forms_apps_idx.html. A link to Grants.gov is also available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The Catalogue of Federal Domestic Assistance (CFDA) number for Section 202 Supportive Housing for the Elderly is 14.157. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the Section 202 program, contact Aretha M. Williams, Housing Project Manager, Grant Policy and Management Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410; telephone number 202–402–2480 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

Dated: August 20, 2009.

David H. Stevens,

Assistant Secretary of Housing—Federal Housing Commissioner.

[FR Doc. E9–21559 Filed 9–2–09; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–N–15]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2009 Assisted Living Conversion Program (ALCP) for Eligible Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of the application information, deadline information and other requirements for the FY2009 Assisted Living Conversion Program (ALCP) for Eligible Multifamily Housing Projects. Approximately \$20 million in grant funds is made available through this NOFA, by the Department of Housing and Urban Development Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009), for the physical conversion of eligible multifamily assisted housing projects or portions of projects to assisted living facilities (ALFs). The notice providing information regarding the application process, funding criteria and eligibility requirements is available on the Grants.gov Web site at http://apply07.grants.gov/apply/forms_apps_idx.html. A link to Grants.gov is also available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>. The Catalogue of Federal Domestic Assistance (CFDA) number for the Assisted Living Conversion Program for Eligible Multifamily Housing Projects (ALCP) is 14.314. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the ALCP program, contact Aretha M. Williams, Housing Project Manager, Grant Policy and Management Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410; telephone number 202–402–2480 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

Dated: August 20, 2009.

David H. Stevens,

Assistant Secretary of Housing—Federal Housing Commissioner.

[FR Doc. E9–21535 Filed 9–2–09; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR**National Park Service****National Register of Historic Places; Notification of Pending Nominations and Related Actions**

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 22, 2009.

Pursuant to § 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 23, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS**Crawford County**

Butterfield Overland Mail Route Lee Creek Road Segment, Lee Creek Rd. W. of AR 220, Cedarville, 09000770

Butterfield Overland Mail Route Lucian Wood Road Segment, Lucian Wood Road between jct of Armer La. and Cedarville Rd. and AR 220, Cedarville, 09000771

Cross County

Wynne Industrial Historic District, Corner of W. Merriman Ave. & Martin Luther King Dr., Wynne, 09000772

Garland County

Joers, Peter Dierks, House, 2111 Park Ave., Hot Springs, 09000773

COLORADO**Denver County**

Bastien's Restaurant (Commercial Resources of the East Colfax Avenue Corridor), 3503 E. Colfax Ave., Denver, 09000774

Walters, Manuella C., Duplex, 1728 & 1732 Gilpin St., Denver, 09000775

FLORIDA**Lake County**

Mount Dora Historic District (Mount Dora, FL), Roughly 3rd Ave., 11 Ave., Clayton St., Helen St., Mount Dora, 09000777

St. Johns County

North City Historic District, Roughly bounded by Castillo Dr., San Marcos Ave., Old Mission, US 1, Saint Augustine, 09000778

GEORGIA**Clarke County**

Jackson Street Cemetery, S. Jackson St.,
University of Georgia campus, Athens,
09000779

ILLINOIS**Cook County**

Calhoun Family, Mr. James Kent, House, 740
Greenwood Ave., Glencoe, 09000780
Dilg, Herbert A., House, 8544 Callie, Morton
Grove, 09000781

MARYLAND**Anne Arundel County**

Robinson House, 102 Evon Ct., Severna Park,
09000782

Baltimore County

Rodgers Forge Historic District, Roughly
bounded by Stanmore Rd., Stevenson La.,
York Rd., Regester Ave., and Bellona Ave.,
Baltimore, 09000783

MISSISSIPPI**Clay County**

West Point Unified Historic District, Roughly
bounded by the rear property lines of
resources along E. Main St. to the N.,
McCord St. to the W., Forest St., West
Point, 09000784

Leflore County

Itta Bena Historic District, Roughly bounded
by Cemetery St. to the N., Lake Shore Dr.
to the E., Lake Side St. to the S., Dewey St.
to the W., Itta Bena, 09000785

MISSOURI**Cole County**

Moreau Park Historic District, 3714 Old
Wardsville Rd., Jefferson City, 09000786

St. Louis County

Moorlands Addition Apartment District,
Roughly bounded by Clayton Rd.,
Glenridge Ave., Wydown Blvd. and (both
sides) Westwood Dr., Clayton, 09000787

MONTANA**Carbon County**

Smith Mine Historic District, MT 308,
Bearcreek, 09000788

PUERTO RICO**San Juan Municipality**

San Antonio Railroad Bridge (Historic
Bridges of Puerto Rico MPS), Spanning San
Antonio Channel at PR 1 E. of San Juan
Islet, San Juan, 09000789

SOUTH CAROLINA**Richland County**

Hopkins Family Cemetery, Address
Restricted, Hopkins, 09000790

VIRGINIA**Alleghany County**

Galt's Mill Complex, 1133 Galt's Mill Rd.,
Madison Heights, 09000791

Buena Vista Independent City

Buena Vista Downtown Historic District,
2000 & 2100 blocks of Magnolia Ave. and
adjacent blocks, Buena Vista, 09000792

Dinwiddie County

Zehmer Farm, 9818 Jack Zehmer Rd.,
McKenney, 09000793

Newport News Independent City

Whittaker Memorial Hospital, 1003 Twenty-
Eighth St., Newport News, 09000794

Northampton County

Eastville Historic District, Area includes VA
Rt. 13, Old Town Neck Dr., Courthouse
Rd., Willow Oak Rd., Rockefeller La., and
Stumptown Dr., Eastville, 09000795

Richmond County

Woodland Heights Historic District, Bounded
by James River, W. 24th St., Bainbridge St.
and Forest Hill Ave., and W. 32nd and
34th Sts., Richmond, 09000796

WISCONSIN**Dodge County**

Fountain Inn, 203 Front St., Beaver Dam,
09000797

[FR Doc. E9-21480 Filed 9-4-09; 8:45 am]

BILLING CODE P**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

**[FWS-R3-ES-2009-N180; 33430-1122-0000
F2]**

**Proposed Low Effect Habitat
Conservation Plan for Quad Cities
Nuclear Station, Rock Island County, IL**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice: Receipt of application
for an incidental take permit; notice of
availability.

SUMMARY: Exelon Inc. (Applicant) has
applied to the U.S. Fish and Wildlife
Service (us, Service) for an incidental
take permit (ITP) under the Endangered
Species Act of 1973, as amended (Act).
The proposed permit duration is 24
years. The Applicant has prepared a
Habitat Conservation Plan (HCP) to
address potential impacts to two mussel
species. We have made a preliminary
determination that the HCP and permit
application are eligible for categorical
exclusion under the National
Environmental Policy Act of 1969
(NEPA). The basis for this determination
is contained in an Environmental
Action Statement and low-effect
screening form, which are also available
for public review.

DATES: To ensure consideration, please
send your written comments by October
8, 2009.

ADDRESSES: Send written comments to
Richard C. Nelson, Field Supervisor, by
U.S. mail at U.S. Fish and Wildlife
Service, Rock Island Field Office, 1511
47th Ave. Moline, IL 61265, or by fax to
(309) 757-5807.

FOR FURTHER INFORMATION CONTACT: Ms.
Jody Millar (309) 757-5800.

SUPPLEMENTARY INFORMATION: Exelon
Inc. (Applicant) has applied to the U.S.
Fish and Wildlife Service (us, Service)
for an incidental take permit (ITP) under
the Act (16 U.S.C. 1531 *et seq.*) The
proposed duration of the permit is 24
years. The Applicant has prepared a
Habitat Conservation Plan (HCP) to
address potential impacts to two mussel
species: *Lampsilis higginsii* (Higgins eye
pearly mussel), federally listed as
endangered, and *Plethobasus cyphus*
(sheepnose mussel), a candidate for
listing. Exelon's draft HCP addresses
three specific proposed covered
activities:

(1) Implementation of an alternate
thermal standard (ATS) for discharge
waters associated with the operation of
the Quad Cities Nuclear Station,

(2) Maintenance dredging associated
with water intake structures, and

(3) Removal of Edison Pier.

We have made a preliminary
determination that the HCP and permit
application are eligible for categorical
exclusion under NEPA (42 U.S.C. 4321
et seq.). The basis for this determination
is contained in an Environmental
Action Statement and low-effect
screening form, which are also available
for public review.

Availability of Documents

Individuals requesting copies of the
application and draft HCP should
contact the U.S. Fish and Wildlife
Service by telephone at (309) 757-5800
or by letter (*see ADDRESSES*). Copies of
the draft HCP are also available for
public inspection during regular
business hours at the Rock Island Field
Office (*see ADDRESSES*), or at the
Service's Regional Web site at [http://
www.fws.gov/midwest/Endangered/
permits/hcp/index.html](http://www.fws.gov/midwest/Endangered/permits/hcp/index.html).

Public Availability of Comments

Before including your address, phone
number, e-mail address, or other
personal identifying information in your
comment, you should be aware that
your entire comment—including your
personal identifying information—may
be made publicly available at any time.
While you can ask us in your comment
to withhold your personal identifying
information from public review, we
cannot guarantee that we will be able to
do so.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. The definition of take under the Act includes the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). We have principal trust responsibility for the conservation and protection of threatened and endangered species under the Act. Section 10 of the Act, 16 U.S.C. 1539, establishes a program whereby persons seeking to pursue activities that otherwise could give rise to liability for unlawful "take" of federally protected species may receive an ITP, which protects them from such liability. To obtain an ITP, the applicant must submit an HCP and the taking must be incidental to, and not the purpose of, an otherwise lawful activity, *Id.* §§ 1539(a)(1)(B), 1539(a)(2)(A). Once we have determined that the applicant has satisfied these and other statutory criteria, we may issue the ITP.

Exelon Inc. owns and operates Quad Cities Nuclear Station (QCNS), a nuclear power station located on the east (Illinois) shoreline of Pool 14 on the Mississippi River, at River Mile (RM) 506.7, approximately halfway between Lock and Dam 13 (upstream) at RM 522.5 and Lock and Dam 14 (downstream) at RM 493.3.

Covered Activities

Exelon Inc. is requesting that an alternate thermal standard (ATS) be issued for Quad Cities Nuclear Station under section 316(a) of the Clean Water Act, (33 U.S.C. Sec. 1326(a)). The ATS would include:

(1) Changing the method for tracking and regaining excursion hours (during which the plant currently is authorized to exceed thermal limits by up to 3 °F) from a rolling 12-month basis to a calendar year basis (January through December).

(2) Increasing the number of excursion hours available per year from 1 percent (87.6 hours), which is currently allowed by the plant's National Pollutant Discharge Elimination System (NPDES) Permit, to 3 percent (262.8 hours), of which only 1.5 percent (131.4 hours) of those hours may be between 89 °F and 91 °F.

(3) Increasing the excursion hour downstream temperature limit by no more than 5 °F (*i.e.*, 91 °F downstream instead of current NPDES Permit limit of 89 °F in July and August, and 90 °F

downstream rather than current NPDES Permit limit of 88 °F in September).

QCNS currently operates under NPDES permit conditions that allow 87.6 excursion hours per year, during which the plant may cause river temperatures to exceed maximum temperature standards by up to 3 °F. QCNS operated within permit conditions during the period 2000–2005. Excursion hours were only used in 2001 (57.35 hours) and 2005 (42.50 hours). In July and August 2006, QCNS was granted a provisional variance from these permit conditions to address periods of low Mississippi River flows and high ambient river temperatures experienced in the summer of 2006. The provisional variance allowed additional excursion hours (beyond the annual allotment of 87.6 hours) at temperatures up to 5 °F. QCNS used 222.75 excursion hours in 2006, but water temperature during excursion hour events were not allowed to exceed a 5 °F increase, which equates to 91 °F downstream in July, 91 °F in August and 90 °F in September. In 2007, QCNS operated within permit conditions, and 74.0 excursion hours were used in early August.

The new ATS would be adopted following proceedings before the Illinois Pollution Control Board pursuant to the Board's authority to issue ATS under section 316 of the Clean Water Act. Following the Board's decision, the Environmental Protection Agency would incorporate the standards in the NPDES (discharge) permit.

A second covered activity described in the draft HCP involves maintenance dredging activities in front of the plant's intake. QCNS requires a consistent supply of water for safe operations of the two nuclear reactors. Over the past few years (2005, 2007, and 2008), dredging in front of the intake forebay has been a maintenance necessity to achieve the consistent water supply. High water events deposit coarse materials in front of the intake. In October 2005, QCNS contracted a mussel survey in the intake area. Results of the survey indicated that impacts associated with maintenance dredging would be limited to a few common species (threehorn, threeridge, hickorynut, and plain pocketbook) of freshwater mussels. All other species were represented by two individuals or less. One butterfly mussel was also found in the survey. An existing dredging permit (CEMVR-OD-P-2006-1856) allows dredging within a 500' × 700' area in front of the station's forebay. QCNS does not expect to increase the size of the dredging area. QCNS anticipates that dredging will be necessary in the near future;

consequently, this activity is being included in the draft HCP. Maintenance dredging is assumed to occur once every 2 years over the life of the proposed permit. If the dredging area needs to be expanded from the current levels in the future, Exelon will consult with us prior to such activities.

A third covered activity in the draft HCP involves the removal of a structure known as the Edison Pier (RM 506.8L), which has been in existence since the initial building process of QCNS in the late 1960s. Although there are no immediate plans to remove this structure, preliminary demolition planning has occurred and this project could begin in the next few years. The process of removing this structure would extend a minimal distance out into the river channel, and could potentially impact any mussels in the area. It is important to note that coverage by this HCP does not exempt an activity from other local, State and Federal regulations, including permits issued by the U.S. Army Corps of Engineers.

Impact Assessment

The purpose of an HCP is to ensure incidental take will be minimized and mitigated to the maximum extent practicable and will not appreciably reduce the likelihood of the survival and recovery of this species in the wild. Exelon designed the draft HCP in close consultation with us to ensure the planning area will continue to support suitable habitat for the species, while allowing for incidental take from the proposed activities.

To facilitate the development of the HCP, Exelon retained Ecological Specialists, Inc. (ESI) to evaluate potential direct and indirect impacts associated with adopting an Alternative Thermal Standard on covered species within the study area (RM 503.0 to 506.9). A copy of ESI's report is appended to the draft HCP. ESI was also retained to conduct mussel surveys in the area associated with maintenance dredging and Edison Pier.

Exelon proposes to minimize, mitigate, and monitor the impacts of taking listed species by implementing the following measures:

(1) Fish propagated at the QCNS will be inoculated with Higgins eye pearl mussel and sheepsnose mussel glochidia. QCNS will work with the Service and other partners to develop parameters for determining appropriate species augmentation/reintroduction sites and rates with regard to protection of native resident genetics. Methods include free release of fish inoculated with Higgins eye pearl mussel and

sheepnose mussel glochidia in select locations, and use of cage culture techniques for rearing of Higgins eye pearl mussel and sheepnose mussel in select locations.

(2) Outreach to universities focused on soliciting studies related to temperature and mussels, in situ or in conjunction with the lab facilities at QCNS.

(3) Implementation, effectiveness, and validation monitoring, including mussel bed monitoring, monitoring of temperature studies, long-term fish monitoring (ongoing), and use of adaptive management techniques will be used throughout the length of the permit.

Decisions

We will evaluate the permit application, the HCP, and received comments to determine whether the application meets the requirements of section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. If the requirements are met, we will issue an incidental take permit to the Applicant for take of the Higgins eye pearl mussel and sheepnose mussel incidental to the otherwise lawful activities of the project. We will not make a final decision until after the end of the 30-day comment period and will fully consider all comments we receive during the comment period.

Dated: August 25, 2009.

Richard C. Nelson,

Field Supervisor, U.S. Fish and Wildlife Service.

[FR Doc. E9-21513 Filed 9-4-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2009-N179; 96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct certain activities with endangered species and/or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by October 8, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Submit your written data, comments, or requests for copies of the complete applications to the address shown in **ADDRESSES**.

Applicant: Texas Tech University, Department of Biological Sciences, Lubbock, TX, PRT-219951

The applicant requests a permit to import unlimited numbers of biological specimens from crocodiles, alligators, caimans, and gavials (Order: Crocodylia) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Florida Fish and Wildlife Conservation Commission, Port Charlotte, FL, PRT-221391

The applicant requests a permit to export biological samples from smalltoothed sawfish (*Pristis pectinata*) to the Great Lakes Institute for Environmental Research, Windsor, Ontario, Canada, for the purpose of scientific research.

Applicant: Atlanta-Fulton County Zoo, Atlanta, GA, PRT-222610

The applicant requests a permit to export one female captive-bred giant panda (*Ailuropoda melanoleuca*) born at the zoo in 2006 and owned by the Government of China, to the Chengdu Research Base of Giant Panda Breeding, Sichuan, China, under the terms of their loan agreement with the Chinese Association of Zoological Gardens. This export is part of the approved loan program for the purpose of enhancement of the survival of the species through scientific research as

outlined in Zoo Atlanta's original permit (MA008519).

Applicant: Earth Promise, doing business as Fossil Rim Wildlife Center, Glen Rose, TX, PRT-223400

The applicant requests a permit to export one male captive-born black rhinoceros (*Diceros bicornis*) to the Africam Safari, Puebla, Mexico, for the purpose of the enhancement of the survival of the species.

Applicant: New York University College of Dentistry, New York, NY, PRT-225797

The applicant requests a permit to import biological samples of skeletal parts salvaged from both captive and wild populations of black rhinoceros (*Diceros bicornis*), mountain gorilla (*Gorilla gorilla beringei*), chimpanzee (*Pan troglodytes*), leopard (*Panthera pardus*), and L'Hoest's monkey (*Cercopithecus lhoesti*) from the Office Rwandais du Tourisme et des Parcs Nationaux, Kigali, Rwanda, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Ferdinand and Anton Fercos-Hantig, Las Vegas, NV, PRT-809334

On July 28, 2009, we published a **Federal Register** notice inviting the public to comment on several applications for permits to conduct certain activities with endangered species (74 FR 37240). We made an error in reporting the species of one animal in the Ferdinand and Anton Fercos-Hantig applications, which starts at the bottom of column 1 on page 37241. The animal named Sarina (PRT-809334) is not a female captive-born tiger (*Panthera tigris*) as we reported in 74 FR 37240, but rather a female captive-born leopard (*Panthera pardus*). All the other information we printed was correct. With this notice, we correct that error and reopen the comment period for PRT-809334. The corrected entry for this application is as follows: The applicant requests re-issuance of their permit to export/re-export and re-import one female captive-born leopard (*Panthera pardus*), "Sarina," to worldwide locations for the purpose of enhancement of the species through conservation education. This notification covers activities to be conducted by the applicant over a 3-year period and the import of any potential progeny born while overseas.

The following applicants request a permit to import the sport-hunted trophy of one male bontebok

(*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George H. Brannen, Inverness, FL, PRT-217639

Applicant: Ralph D. Miller, Delta Junction, AK, PRT-221404

Applicant: Mark Peterson, Slinger, WI, PRT-222050

Applicant: Leigh M. Barry, Dent, MN, PRT-222865

Applicant: Patrick T. O'Brien, Bath, OH, PRT-233187

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Submit your written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications to the address shown in **ADDRESSES**. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Charles Grossman, Xavier University, Cincinnati, OH, PRT-049136

The applicant requests an amendment to his permit to allow him to acquire up to three larynxes (including pharynxes, trachea, and primary bronchi) per year from dead, necropsied Florida manatees (*Trichechus manatus*) from the Florida Fish and Wildlife Conservation Commission in St. Petersburg, Florida, for the purpose of scientific research on the mechanics of manatee vocalizations. This notification covers activities to be conducted by the applicant over the remainder of his five-year permit.

Applicant: Alaska Department of Fish and Game, Fairbanks, AK, PRT-220876

The applicant requests a permit to tag and collect skin biopsy samples from up to 45 walrus (*Odobenus rosmarus*) and to harass up to 1800 non-target animals per year for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding a copy of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Emma K. Napper, The Natural World, BBC Natural History Unit, Bristol, United Kingdom, PRT-221257

The applicant requests a permit to photograph Southern sea otters (*Enhydra lutris nereis*), both above and under water, for commercial and educational purposes. This notification covers activities to be conducted by the applicant over a one-year period.

Dated: August 28, 2009.

Lisa J. Lierheimer

Senior Permit Biologist, Branch of Permits, Division of Management Authority
[FR Doc. E9-21475 Filed 9-4-09; 8:45 am]
BILLING CODE 4310-55-S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-686]

In the Matter of Certain Bulk Welding Wire Containers and Components Thereof and Welding Wire; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 7, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of The Lincoln Electric Company of Cleveland, Ohio and Lincoln Global, Inc. of City of Industry, California. A letter supplementing the complaint was filed on August 20, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bulk welding wire containers and components thereof and welding wire by reason of infringement of certain claims of U.S. Patent Nos. 6,260,781; 6,648,141; 6,708,864; 6,913,145; 7,309,038; 7,398,881; and 7,410,111. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation

and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint and the supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2781.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 1, 2009, *Ordered that—*
(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bulk welding wire containers or components thereof or welding wire that infringe one or more of claim 1 of U.S. Patent No. 6,260,781; claims 1, 4, 8, and 9 of U.S. Patent No. 6,648,141; claims 3, 4, 6, 12, and 13 of U.S. Patent No. 6,708,864; claim 4 of U.S. Patent No. 6,913,145; claims 1-7, 12, 13, 16, 19-24, 31, 33-36, 43, and 46 of U.S. Patent No. 7,309,038; claim 1 of U.S. Patent No. 7,398,881; and claim 11 of U.S. Patent No. 7,410,111, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following

are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

The Lincoln Electric Company, 22801 St. Clair Avenue, Cleveland, Ohio 44117-1199.

Lincoln Global, Inc., 17721 Railroad Street, City of Industry, California 91748.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Atlantic China Welding Consumables, Inc., Zigong, Sichuan 643010, China.

ESAB AB, Box 8004, Lindholmsallen 9, Göteborg, S-402 77, Sweden.

Hyundai Welding Co., Ltd., Ilsong Building 15F, 157-37 Samsung 1-dong, Gangnam-gu Seoul, 135 880, Korea.

Kiswel Co., Ltd., Huengkok Building, 43-1 Juja Dong, Seoul, Korea.

Sidergas SpA, Viale Rimembranza 17, 37010 S. Ambrogio (Verona) Italy.

(c) The Commission investigative attorney, party to this investigation, is Benjamin Levi, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the

issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: September 2, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-21542 Filed 9-4-09; 8:45 am]

BILLING CODE 7020-02-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-467 and 731-TA-1164-1165 (Preliminary)]

Narrow Woven Ribbons With Woven Selvedge From China and Taiwan

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of narrow woven ribbons with woven selvedge, primarily provided for in subheading 5806.32 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China, and by imports of such merchandise from China and Taiwan that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under

investigation is sold at the retail level, representative consumer organizations, have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On July 9, 2009, a petition was filed with the Commission and Commerce by Berwick Offray LLC and its wholly owned subsidiary Lion Ribbon Company, Inc., Berwick, PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized imports of narrow woven ribbons with woven selvedge from China and by imports of such merchandise from China and Taiwan sold in the United States at less than fair value.

Accordingly, effective July 9, 2009, the Commission instituted countervailing duty investigation No. 701-TA-467 and antidumping duty investigations Nos. 731-TA-1164-1165 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 15, 2009 (74 FR 34362). The conference was held in Washington, DC, on July 30, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 24, 2009. The views of the Commission are contained in USITC Publication 4099 (August 2009), entitled *Narrow Woven Ribbons with Woven Selvedge from China and Taiwan: Investigation Nos. 701-TA-467 and 731-TA-1164-1165 (Preliminary)*.

By order of the Commission.

Issued September 1, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-21443 Filed 9-4-09; 8:45 am]

BILLING CODE 7020-02-P

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE**Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA")**

Consistent with Section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on September 1, 2009, the United States lodged a Consent Decree with certain third party defendants in *United States of America v. El Dorado County, California, et al*, Civil No. S-01-1520 MCE GGH (USDC E.D. CA.), with respect to the Meyers Landfill Site, located in Meyers, El Dorado County, California (the "Site").

El Dorado County, California filed a Third Party Complaint for contribution against a number of third party defendants. The Consent Decree resolves the County's claims against eight of the third party defendants (Douglas County, Nevada; Hertz Corporation and Hertz Local Edition Corporation; Raley's; Lake Tahoe Unified School District; Harrah's Operating Company, Inc. And Harveys Tahoe Management Company, Inc.; Heavenly Valley Ski & Resort and Heavenly Valley; Sierra Pacific Power Company and Safeway, Inc. referred to collectively as "Settling Third Parties). Under the proposed Consent Decree the Settling Third Parties will pay a total of \$1.25 million. Once the Consent Decree is approved the \$1.25 million will be deposited into a court registry account and will be available, in the context of a judgment against or settlement with the County, to pay the United States' response costs at the Site, or to fund future response actions at the Site.

The United States is a party to the Consent Decree to resolve potential United States Department of Agriculture, Forest Service claims against Settling Third Parties. In exchange for the payment to the court registry account the Settling Third Parties will receive from the United States a covenant not to sue or to take administrative action pursuant to Sections 106 or 107 of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9606 and 9607, as amended, for the United States' past and future response costs at the Site.

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 Acting 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 of America v. El Dorado County, California, et al*, Civil No. S-01-1520 MCE GGH (USDC E.D. CA.) (DOJ Ref. No. 90-11-3-06554).

The Consent Decree may be examined at U.S. Department of Agriculture, Office of General Counsel, 33 New Montgomery Street, 17th Floor, San Francisco, CA 94150 (contact Rose Mikovsky, (415) 744-3158). 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, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America v. El Dorado County, California, et al*, Civil No. S-01-1520 MCE GGH (USDC E.D. CA.) (DOJ Ref. No. 90-11-3-06554), and enclose a check in the amount of \$10.25 (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. E9-21485 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE**Bureau of Alcohol, Tobacco, Firearms and Explosives**

[OMB Number 1140-0073]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Furnishing of Samples.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information

collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until November 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Debra Satkowiak, Chief, Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Furnishing of Samples.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Licensed manufacturers and licensed importers

and persons who manufacture or import explosive materials or ammonium nitrate must, when required by the Director, furnish samples of such explosive materials or ammonium nitrate; information on chemical composition of those products; and any other information that the Director determines is relevant to the identification of the ammonium nitrate.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,350 respondents will 30 minutes to submit the samples.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,175 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 2, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-21654 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-0009]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Revision of a currently approved collection; Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Feloniously Killed and Assaulted; Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Accidentally Killed.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until November 9, 2009.

This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625-3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Feloniously Killed and Assaulted and Law Enforcement Officers Killed and Assaulted Program; Analysis of Officers Accidentally Killed.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms 1-701 and 1-701a; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, State, Federal, and tribal law enforcement agencies.

These forms will gather specific incident data obtained from law enforcement agencies in which an officer was accidentally killed, feloniously killed or assaulted with injury from a firearm or knife or other cutting instrument in the line of duty. Data are published annually in the publication Law Enforcement Officers Killed and Assaulted.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 258 law enforcement agency respondents; calculated estimates indicate 1 hour per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 258 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 1, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9-21515 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Office of Justice Programs Solicitation Template.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until November 9, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or

additional information, please contact: Amy Callaghan, (202) 514-9292, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or Amy.Callaghan@usdoj.gov.

Written comments and suggestions from the public and affected parties concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Information in response to the required data elements outlined in the solicitation template for programs administered by the Office of Justice Programs.

(2) *The title of the form/collection:* Office of Justice Programs solicitation template.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations and faith-based organizations. The purpose of the solicitation template is to provide framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific

program (e.g. project activities and timeline, proposed budget); outlines program evaluation and performance measure; explains selection criteria and the review process; and provides registration dates, due dates, and instructions on how to apply within the designated application system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collected annually from 9,800 applicants, representing State agencies, tribal governments, local governments, colleges and universities, non-profit organizations, and for-profit organizations. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare research and evaluation proposals, one of the most time intensive types of applications solicited by OJP. The estimate of burden hours is based on OJP's prior experience with the research application submissions process.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 294,000 hours.

If additional information is required contact: Mrs. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 1, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9-21514 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for

the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on July 16, 2009, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665-2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480).	I
Fenethylamine (1503)	I
Gamma Hydroxybutyric Acid (2010).	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxyamphetamine (7411) ...	I
Alpha-methyltryptamine (7432)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Benzylpiperazine (7493)	I
Etorphine (except HCl) (9056)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Dextromoramide (9613)	I
Dipipanone (9622)	I
Trimeperidine (9646)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II

Drug	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoyllecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms). (9273)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Levo-alphaacetylmethadol (9648) ..	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670) ..	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than October 8, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: August 28, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–21543 Filed 9–4–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on July 8, 2009, Clinical Supplies Management, Inc., 342 42nd Street South, Fargo, North Dakota 58103, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Sufentanil (9740), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance with the sole purpose of packaging, labeling, and distributing to customers which are qualified clinical sites conducting clinical trials under the auspices of an FDA-approved clinical study.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than October 8, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements

for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: August 28, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–21541 Filed 9–4–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on July 2, 2009, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, to validate production and quality control systems, for a reference standard, and for producing material for a future investigational new drug (IND) submission.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrisette Drive, Springfield, VA. 22152; and must be filed no later than October 8, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: August 21, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–21540 Filed 9–4–09; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Correction

By Notice dated June 24, 2009, and published in the **Federal Register** on July 9, 2009, (74 FR 32954), the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, provided notice of application by Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, to be registered as an importer of basic classes of controlled substances listed in schedule II. The Notice of Application should be corrected by adding the following information: “The company plans to import the listed controlled substances to manufacture bulk active pharmaceutical ingredients.”

Dated: August 21, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–21539 Filed 9–4–09; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on

April 29, 2009 (74 FR 19595), Almac Clinical Services, Inc., (ASCI), 2661 Audubon Road, Audubon, Pennsylvania 19403, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Oxycodone (9143)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Almac Clinical Services Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Almac Clinical Services Inc. to ensure that the company’s registration is consistent with the public interest. The investigation has included inspection and testing of the company’s physical security systems, verification of the company’s compliance with State and local laws, and a review of the company’s background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–21538 Filed 9–4–09; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009 (74 FR 19594), Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Morphine (9300), a basic class of

controlled substance listed in schedule II.

The company plans to import products for research experimentation or clinical use and analytical testing.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Meridian Medical Technologies to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Meridian Medical Technologies to ensure that the company’s registration is consistent with the public interest. The investigation has included inspection and testing of the company’s physical security systems, verification of the company’s compliance with state and local laws, and a review of the company’s background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–21537 Filed 9–4–09; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009 and published in the **Federal Register** on April 29, 2009, (74 FR 19594), Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to

manufacture bulk controlled substance intermediates for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and § 952(a) and determined that the registration of Penick Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and § 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21536 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated June 3, 2009, and published in the **Federal Register** on June 9, 2009, (74 FR 27347), Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (7473).	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I

Drug	Schedule	Drug	Schedule
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663).	I	Dimethylthiambutene (9619)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I	Dimethyltryptamine (7435)	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I	Dioxaphetyl butyrate (9621)	I
2,5-Dimethoxyamphetamine (7396).	I	Dipipanone (9622)	I
3,4,5-Trimethoxyamphetamine (7390).	I	Drotebanol (9335)	I
3,4-Methylenedioxyamphetamine (7400).	I	Ethylmethylthiambutene (9623)	I
3,4-Methylenedioxyamphetamine (7405).	I	Etonitazene (9624)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I	Etorphine except HCl (9056)	I
3-Methylfentanyl (9813)	I	Etoxidine (9625)	I
3-Methylthiofentanyl (9833)	I	Fenethylamine (1503)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I	Furethidine (9626)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I	Gamma Hydroxybutyric Acid (2010).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I	Heroin (9200)	I
4-Methylaminorex (cis isomer) (1590).	I	Hydromorphanol (9301)	I
4-Methoxyamphetamine (7411) ...	I	Hydroxypethidine (9627)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I	Ibogaine (7260)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I	Ketobemidone (9628)	I
Acetorphine (9319)	I	Levomoramide (9629)	I
Acetyl-alpha-methylfentanyl (9815).	I	Levophenacetyl morphan (9631)	I
Acetyldihydrocodeine (9051)	I	Lysergic acid diethylamide (7315)	I
Acetylmethadol (9601)	I	Marihuana (7360)	I
Allylprodine (9602)	I	Mecloqualone (2572)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I	Mescaline (7381)	I
Alpha-ethyltryptamine (7249)	I	Methaqualone (2565)	I
Alphameprodine (9604)	I	Methcathinone (1237)	I
Alphamethadol (9605)	I	Methyldesorphine (9302)	I
Alpha-methylfentanyl (9814)	I	Methyldihydromorphine (9304)	I
Alpha-methylthiofentanyl (9832) ...	I	Morpheridine (9632)	I
Alpha-methyltryptamine (7432) ...	I	Morphine methylbromide (9305) ..	I
Aminorex (1585)	I	Morphine methylsulfonate (9306)	I
Benzethidine (9606)	I	Morphine-N-Oxide (9307)	I
Benzylmorphine (9052)	I	Myrophine (9308)	I
Betacetylmethadol (9607)	I	N,N-Dimethylamphetamine (1480)	I
Beta-hydroxy-3-methylfentanyl (9831).	I	N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (9834).	I
Beta-hydroxyfentanyl (9830)	I	N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (9818).	I
Betameprodine (9608)	I	N-Benzylpiperazine (7493)	I
Betamethadol (9609)	I	N-Ethyl-3-piperidyl benzilate (7482).	I
Betaprodine (9611)	I	N-Ethylamphetamine (1475)	I
Bufotenine (7433)	I	N-Ethyl-1-phenylcyclohexylamine (7455).	I
Cathinone (1235)	I	N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
Clonitazene (9612)	I	Nicocodeine (9309)	I
Codeine methylbromide (9070)	I	Nicomorphine (9312)	I
Codeine-N-Oxide (9053)	I	N-Methyl-3-piperidyl benzilate (7484).	I
Cyprenorphine (9054)	I	Noracymethadol (9633)	I
Desomorphine (9055)	I	Norlevorphanol (9634)	I
Dextromoramide (9613)	I	Normethadone (9635)	I
Diampromide (9615)	I	Normorphine (9313)	I
Diethylthiambutene (9616)	I	Norpipanone (9636)	I
Diethyltryptamine (7434)	I	Para-Fluorofentanyl (9812)	I
Difenoxin (9168)	I	Parahexyl (7374)	I
Dihydromorphine (9145)	I	Peyote (7415)	I
Dimenoxadol (9617)	I	Phenadoxone (9637)	I
Dimepheptanol (9618)	I	Phenampromide (9638)	I
		Phenomorphane (9647)	I
		Phenoperidine (9641)	I
		Pholcodine (9314)	I
		Piritramide (9642)	I
		Proheptazine (9643)	I
		Propidine (9644)	I
		Propiram (9649)	I
		Psilocybin (7437)	I
		Psilocyn (7438)	I
		Racemoramide (9645)	I
		Tetrahydrocannabinols (7370)	I
		Thebacon (9315)	I
		Thiofentanyl (9835)	I

Drug	Schedule
Tilidine (9750)	I
Trimeperidine (9646)	I
1-Phencyclohexylamine (7460)	II
1- Piperidinocyclohexanecarbonitrile (8603).	II
Alfentanil (9737)	II
Alphaprodine (9010)	II
Amobarbital (2125)	II
Amphetamine (1100)	II
Anileridine (9020)	II
Beztramide (9800)	II
Carfentanil (9743)	II
Coca Leaves (9040)	II
Cocaine (9041)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Dihydrocodeine (9120)	II
Dihydroetorphine (9334)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Etorphine Hcl (9059)	II
Fentanyl (9801)	II
Glutethimide (2550)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Isomethadone (9226)	II
Levo-alphaacetylmetadol (9648) ..	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Lisdexamfetamine (1205)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254) ...	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Moramide intermediate (9802)	II
Morphine (9300)	II
Nabilone (7379)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, granulated (9640)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II
Pentobarbital (2270)	II
Phenazocine (9715)	II
Phencyclidine (7471)	II
Phenmetrazine (1631)	II
Phenylacetone (8501)	II
Piminodine (9730)	II
Powdered opium (9639)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Remifentanil (9739)	II
Secobarbital (2315)	II
Sufentanil (9740)	II
Thebaine (9333)	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse (NIDA) for research activities.

No comments or objections have been received. DEA has considered the

factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Research Triangle Institute to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: August 28, 2009.
Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
 [FR Doc. E9-21534 Filed 9-4-09; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 21, 2009, Chemic Laboratories, Inc., 480 Neponset Street, Building 7, Canton, Massachusetts 02021, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture small quantities of the above listed controlled substance for distribution to its customers for the purpose of research.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive,

Springfield, Virginia 22152; and must be filed no later than November 9, 2009.

Dated: August 28, 2009.
Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
 [FR Doc. E9-21521 Filed 9-4-09; 8:45 am]
BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 8, 2009, Cody Laboratories, 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydrocodeine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans on manufacturing the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than November 9, 2009.

Dated: August 28, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.

[FR Doc. E9-21522 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

**Manufacturer of Controlled
Substances; Notice of Application**

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 26, 2009, Noramco Inc., Division of Ortho-McNeil, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801-4417, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to bulk manufacture the listed controlled substance as a reference standard for distribution to its customers which are analytical laboratories.

Any other such applicant, and any person who is presently registered with DEA to manufacture such a substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than November 9, 2009.

Dated: August 28, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.

[FR Doc. E9-21524 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

**Manufacturer of Controlled
Substances; Notice of Application**

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 18, 2009, Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina

27709, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine and marihuana derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than November 9, 2009.

Dated: August 21, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.

[FR Doc. E9-21526 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

**Manufacturer of Controlled
Substances; Notice of Application**

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 1, 2009, Alltech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer) (1590).	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411) ...	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-Phenylcyclohexylamine (7460)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Normorphine (9313)	I
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Dihydromorphine (9145)	II
Ecgonine (9180)	II
Meperidine intermediate-B (9233)	II
Noroxymorphone (9668)	II

The company plans to manufacture high purity drug standards used for analytical application only in clinical, toxicological, and forensic laboratories.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrisette Drive,

Springfield, Virginia 22152; and must be filed no later than November 9, 2009.

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21525 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 7, 2009, National Center for Natural Products Research—NIDA MProject, University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to cultivate marihuana for the National Institute on Drug Abuse for research approved by the Department of Health and Human Services.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than November 9, 2009.

Dated: August 28, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21523 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19598), Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21528 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19597), Rhodes Technologies, 498 Washington Street, Coventry, Rhode Island 02816, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for conversion and sale to dosage form manufacturers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Rhodes Technologies to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Rhodes Technologies to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21533 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19599), Norac Inc., 405 S. Motor Avenue, P.O. Box 577, Azusa, California 91702-3232, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Methamphetamine (1105), a basic class of controlled substance listed in schedule II.

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 USC 823(a) and determined that the registration of Norac, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Norac, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 USC 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21532 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19598), Siemens Healthcare Diagnostics Inc., *Attn:* RA, 100 GBC Drive, Mail Stop 514, Newark, Delaware 19702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes

of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The company plans to produce the listed controlled substances in bulk to be used in the manufacture of reagents and drug calibrator/controls which are DEA exempt products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siemens Healthcare Diagnostics Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Siemens Healthcare Diagnostics Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 28, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21531 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19597), Penick Corporation, 33 Industrial Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II

Drug	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers for further manufacture or to manufacture pharmaceutical dosage forms.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Penick Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9-21529 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 17, 2009, and published in the **Federal Register** on April 29, 2009, (74 FR 19598), AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Dextropropoxyphene, bulk (non-dosage form) (9273)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of AMRI Rensselaer, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated AMRI Rensselaer Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 21, 2009.

Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.

[FR Doc. E9-21527 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

United States Parole Commission

Record of Vote of Meeting Closure (Pub. L. 94-409) (5 U.S.C. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 2 p.m., on

Thursday, August 20, 2009, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide one petition for reconsideration pursuant to 28 CFR Section 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell, Edward F. Reilly, Jr. and Patricia K. Cushwa.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: August 27, 2009.

Isaac Fulwood,

Chairman, U.S. Parole Commission.

[FR Doc. E9-21498 Filed 9-4-09; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 1, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Mary Beth Smith-Toomey on 202-693-4223 (this is not a toll-free number)/ e-mail: DOL_PRA_PUBLIC@dol.gov.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—VETS, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-5806

(these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (*see* below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Assistance Secretary for Administration and Management.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Customer Satisfaction Surveys and Conference Evaluations Generic Clearance.

OMB Control Number: 1225-0059.

Affected Public: Individuals.

Total Estimated Number of Respondents: 200,000.

Total Estimated Annual Burden Hours: 20,000.

Total Estimated Annual Costs Burden (does not include hourly wage costs): \$0.

Description: The Department is requesting OMB approval for the continued use of a generic clearance process for customer satisfaction and conference evaluation surveys. Customer satisfaction and conference evaluation surveys provide important information on customer attitudes about the delivery and quality of agency products and services and will be used as part of an ongoing process to improve DOL products and products. For additional information, see related notice published at Volume 74 FR 26426 on June 2, 2009.

Agency: Office of the Assistance Secretary for Administration and Management.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Generic Solicitation for Grant Applications.
OMB Control Number: 1225-0086.
Affected Public: Private Sector.
Total Estimated Number of Respondents: 5,750.
Total Estimated Annual Burden Hours: 115,000.
Total Estimated Annual Costs Burden (does not include hourly wage costs): \$0.
Description: The Department is requesting OMB approval for the continued use of a generic Solicitation for Grant Application (SGA) format for information collection requirements for SGAs that extend beyond what is collected on currently approved standard forms. OMB approval of this generic SGA form will assist the Department to carry out its responsibilities under the Paperwork Reduction Act by accurately accounting for the public burden associated with grant applications through the promotion of a common structure for reporting the information collection requirements contained in DOL's SGAs. For additional information, see related notice published at Volume 74 FR 26425 on June 2, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9-21496 Filed 9-4-09; 8:45 am]

BILLING CODE 4510-23-P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

Proposed 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 request for Office of Management and Budget (OMB) approval of the

Information Collection: Notification of Employee Rights Under Federal Labor Laws 1215-ONEW (1215-AB70). 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 9, 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:* President Barack Obama signed Executive Order 13496 (E.O. 13496) on January 30, 2009, requiring certain Government contractors and subcontractors to post notices informing their employees of their rights as employees under Federal labor laws. The Order also provides the text of contractual provisions that Federal Government contracting departments and agencies must include in every Government contract, except for collective bargaining agreements and contracts for purchases under the Simplified Acquisition Threshold.

E.O. 13496 advances the Administration's goal of promoting economy and efficiency of Federal Government procurement by ensuring that workers employed in the private sector as a result of Federal Government contracts are informed of their rights to engage in union activity and collective bargaining. Knowledge of such basic statutory rights promotes stable labor-management, thus reducing costs to the Federal Government.

The contractual provisions require contractors and subcontractors to post a notice, created by the Secretary of Labor, informing employees of their rights under the National Labor Relations Act. The notice also provides a statement of the policy of the United States to encourage collective bargaining, as well as a list of activities that are illegal under the Act. The notice concludes with a general description of the remedies to which employees may be entitled if these rights have been violated and contact information for further information about those rights and remedies, as well as enforcement procedures.

The clause also requires contractors to include the same clause in their nonexempt subcontracts and purchase orders, and describes generally the

sanctions, penalties, and remedies that may be imposed if the contractor fails to satisfy its obligations under the Order and the clause.

The proposed regulatory provisions implementing E.O. 13496 (29 CFR part 471) include the language of the required notices, and they explain posting and contractual requirements, the complaint process, the investigatory process, and sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order. Specifically, proposed 29 CFR part 471.11(c) sets forth the procedures that the Department must use when accepting written complaints alleging that a contractor doing business with the Federal Government has failed to post the notice required by the Executive Order.

In accordance with the Government Paperwork Elimination Act (GPEA), the Notice to Employees poster will be available for downloading at <http://www.olms.dol.gov> or by sending a request to OLMS-Public@dol.gov upon OMB approval. The Office of Labor-Management Standards submitted the Notice of Proposed Rule-Making 1215-AB70 (NPRM), that's associated with this proposed collection to OMB for comments. The NPRM for 1215-AB70 was published on August 3, 2009. Complaints must be submitted to the Department in writing.

The proposed part 471 requires contractors and subcontractors to post notices and cooperate with any investigation into a failure to comply with the requirements of proposed part 471 as the result of a complaint or a compliance evaluation. It also permits employees to file complaints with the Department alleging that a contractor or subcontractor has failed to comply with those requirements. The burden hours for this collection of information were determined by estimating the time required to perform the filing of complaints under the proposed regulation. Specifically, the Department based its estimates on the experience of the Office of Federal Contract Compliance Programs (OFCCP) administering other laws applicable to Federal contractors, which determined that it will take an average of 1.28 hours for such a complainant to compose a complaint containing the necessary information and to send that complaint to the Department. This number is also consistent with the burden estimate for filing a complaint under E.O. 13201 and the now-revoked part 470 regulations.

The Department has estimated it would receive a total of 50 employee complaints in any given year, which is

significantly larger than the estimate contained in its most recent PRA submission for E.O. 13201. In that submission, the Department estimated it would receive 20 employee complaints. This number itself had been revised downwards because the Department never received any employee complaints pursuant to the now-revoked 29 CFR part 470 regulations. Because the applicability of the proposed rule and E.O. 13496 is greater in scope than the now-revoked part 470 and E.O. 13201 in terms of geography (the now-revoked part 470 regulations only applied to states without right-to-work laws, whereas the proposed rule applies nationwide), the Department has revised upwards its estimate of employee complaints under the proposed rule from 20 to 50. In addition, E.O. 13201 required the posting of a notice containing information of interest to only a few—employees who may have objected to paying union dues or fees for non-representational activities—while the information in the poster required by this regulation should be of interest to all employees.

The Department is seeking a three year approval for this information collection in order to implement the complaint procedures of proposed 29 CFR part 471.

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 this information collection in order to ensure that employees of Federal contractors and subcontractors can properly submit complaints pursuant to proposed 29 CFR 471.

Type of Review: Information Collection Request.

Agency: The Office of Labor-Management Standards.

Title: Notification of Employee Rights Under Federal Labor Laws.

OMB Number: 1215-ONEW (1215-AB70).

Affected Public: Employees of Federal Contractors and Subcontractors.

Total Respondents: 50.

Total Annual Responses: 50.

Estimated Total Burden Hours: 64.

Estimated Time per Response: 1.28 hours.

Frequency: On occasion of employee of a Federal contractor or subcontractor filing a complaint alleging a violation of proposed 29 CFR part 471.

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: September 2, 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. E9-21499 Filed 9-4-09; 8:45 am]

BILLING CODE 4510-CP-P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

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 preclearance 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 Workers' Compensation Programs is soliciting comments concerning its proposal to extend the Office of

Management and Budget (OMB) approval of the Information Collection: Representative Fee Request (CA-143/CA-155). 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 addresses section below on or before November 9, 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*: Individuals filing for compensation benefits with the office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act (FECA) and under the Longshore and Harbor Workers' Compensation Act (LHWCA). The fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection request sets forth the criteria for the information, which must be presented by the respondent in order to have the fee approved by the OWCP. The information collection does not have a particular form or format; the respondent must present the information in any format which is convenient and which meets all the required information criteria. This information collection is currently approved for use through March 31, 2010.

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 Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to approve representative fees under the two Acts.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Representative Fee Request.

Agency Numbers: CA-143/CA-155.

OMB Number: 1215-0078.

Affected Public: Business or other for-profit; individuals or households.

Total Respondents: 8,404.

Total Annual Responses: 8,404.

Estimated Total Burden Hours: 5,419.

Estimated Time per Response: 60 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$12,806.

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: September 2, 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. E9-21500 Filed 9-4-09; 8:45 am]

BILLING CODE 4510-CH-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-354; NRC-2009-0391; Facility Operating Licenses No. NPF-57]

PSEG Nuclear LLC; Notice of Receipt and Availability of Application for Renewal of Hope Creek Generating Station for An Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC) has received an application, dated August 18, 2009, from PSEG Nuclear LLC, filed pursuant to Section 103, of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR Part 54), to renew the operating licenses for the Hope Creek Generating Station (HCGS). Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the

period specified in the respective current operating license. The current operating license for HCGS (NPF-57) expires on April 11, 2026. HCGS is a General Electric boiling-water reactor. It is located in Salem County, New Jersey. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML092430376. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, the application is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1-800-397-4209, extension 4737, or by e-mail at PDR.Resource@nrc.gov.

A copy of the license renewal application for HCGS is also available to local residents near the site at the Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 31st day of August, 2009.

For The Nuclear Regulatory Commission.

David L. Pelton,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9-21617 Filed 9-4-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-272 and 50-311; NRC-2009-0390]

PSEG Nuclear LLC; Notice of Receipt and Availability of Application for Renewal of Salem Nuclear Generating Station, Units 1 and 2 Facility Operating Licenses Nos. DPR-70 and DPR-75 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC) has received an application, dated August 18, 2009, from PSEG Nuclear LLC, filed pursuant to Section 103, of the Atomic Energy

Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR Part 54), to renew the operating licenses for the Salem Nuclear Generating Station (SALEM), Units 1 and 2. Renewal of the licenses would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating licenses for SALEM, Unit 1 (DPR-70) and Unit 2 (DPR-75), expire on August 13, 2016 and April 18, 2020, respectively. Each SALEM unit is a Westinghouse pressurized-water reactor. Both units are located in Salem County, New Jersey. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 or through the Internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML092430232. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. In addition, the application is available at <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1-800-397-4209, extension 4737, or by e-mail at PDR.Resource@nrc.gov.

A copy of the license renewal application for SALEM, Units 1 and 2, is also available to local residents near the site at the Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 31st day of August 2009.

For the Nuclear Regulatory Commission.

David L. Pelton,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9-21620 Filed 9-4-09; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY
COMMISSION**

[NRC-2009-0388]

**Biweekly Notice; Applications and
Amendments to Facility Operating
Licenses Involving No Significant
Hazards Considerations****I. Background**

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 13, 2009, to August 26, 2009. The last biweekly notice was published on August 25, 2009 (74 FR 42926).

**Notice of Consideration of Issuance of
Amendments to Facility Operating
Licenses, Proposed No Significant
Hazards Consideration Determination,
and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of

publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB-05-B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301-492-3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above

date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital

ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery

service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 13, 2007, as supplemented July 13, September 12, November 19, December 13, and December 17, 2007; January 10 (4 letters), January 11 (4 letters), January 14, January 18 (5 letters), January 31, February 25 (2 letters), March 5, and September 30, 2008; March 5 and March 23, 2009.

Description of amendment request: The proposed license amendment request would revise the Millstone Power Station, Unit No. 3 (MPS3) spent fuel pool (SFP) storage requirements.

The July 13, 2007 license amendment request proposed a stretch power uprate (SPU) of MPS3. Included in a supplement dated July 13, 2007, was a request to amend the MPS3 SFP storage requirements. The July 13, 2007 request was noticed in the **Federal Register** on January 15, 2008 (73 FR 2549). By letter dated March 5, 2008, Dominion Nuclear Connecticut, Inc. (DNC) separated the MPS3 SFP storage requirements request from the MPS3 SPU request.

The request to revise the MPS3 SFP storage requirements is being re-noticed using the original significant hazards consideration, specific to the request to revise the SFP storage requirements, as provided by DNC in the July 13, 2007 license amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

6.1.11.1 [Do the proposed changes] [i]nvolve a significant increase in the probability or consequences of an accident previously evaluated[?]

[Response: No]

As discussed in LR [license report] Section 2.8.6.2 [Spent Fuel Storage] and Westinghouse report WCAP–16721–NP “Spent Fuel Criticality Safety Analysis,” revised spent fuel pool criticality analyses were performed to take into account the potential for more reactive fuel at SPU conditions. There are three different regions defined in the MPS3 spent fuel pool.

- Region 1—350 storage locations
- Region 2—673 storage locations
- Region 3—756 storage locations

Because of the potential for requiring more fresh assemblies to be loaded in the core every cycle, some of the assemblies to be discharged to the spent fuel pool may not have sufficient burnup to meet the requirements of Region 2. It may be necessary to temporarily store the discharge assemblies in Region 1. To limit the time that these assemblies need to be stored in Region 1,

additional curves have been added to TS [technical specification] Figure 3.9–3 that specify the burnup limits as a function of enrichment, burnup, and decay time. These decay time curves provide assurance that all spent fuel pool criticality limits will be met.

The spent fuel pool criticality analysis also shows that more limiting burnup requirements are necessary for Region 3 for the assemblies used at the uprate power level. Thus, a new curve is being added to address these requirements for Region 3.

With these changes, the spent fuel pool criticality analysis documented in LR Section 2.8.6.2 and WCAP–16721–NP, shows that the changes do not increase the consequences of any accident.

The new TS limitations provide assurance that the spent fuel pool will remain subcritical for all future cycles at the SPU condition and there is no increase in the probability of a criticality accident. Thus, the changes do not significantly increase the probability of any analyzed accident.

6.1.11.2 [Do the proposed changes] [c]reate the possibility of a new or different kind of accident from any accident previously evaluated[?]

[Response: No]

The changes will be implemented with existing spent pool racks. Thus, no new failure modes are introduced. The proposed additional requirements and the SPU fuel criticality analysis provide assurance that the spent fuel pool will remain subcritical for all uprate cycles. Thus, the changes do not create the possibility of a new or different accident.

6.1.11.3 [Do the proposed changes] [i]nvolve a significant reduction in a margin of safety[?]

[Response: No]

The analysis documented in LR Section 2.8.6.2 and WCAP–16721–NP shows that all spent fuel criticality limits are met and that there is no significant reduction in the margin of safety for the spent fuel pool.

The NRC staff has reviewed the licensee’s analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: June 30, 2009.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.7.9, “Ultimate Heat Sink (UHS),” to add additional essential service water

(SX) cooling tower fan requirements as a function of SX pump discharge temperature to reflect the results of a revised analysis for the UHS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

[Response: No.]

The proposed change does not result in any physical changes to safety related structures, systems, or components. The UHS itself is not an accident initiator; rather, the UHS performs functions to mitigate accidents by serving as the heat sink for safety related equipment. Consequently, the proposed change does not increase the probability of occurrence for any accident previously evaluated.

The UHS plays a vital role in mitigating the consequences of any accident or transient. The proposed changes will ensure that the minimum conditions necessary for the UHS to perform its design functions will always be met. Engineering calculations demonstrate that the SX pump discharge design temperature limit of 100 °F, which was assumed as an initial input for the accident analyses, is preserved. Consequently, the proposed changes to cooling tower fan requirements, relative to the SX pump discharge temperature, do not increase the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

[Response: No.]

The supporting analyses for the proposed change do not involve a new or different kind of accident from any accident previously evaluated. The proposed limits on maximum SX pump discharge temperature, and the proposed fan requirements, are within the design capabilities of the UHS and ensure that the UHS will always be in a condition to perform its design function in the event of an accident or transient. New and revised analyses that support the requested TS changes ensure the full qualification of the UHS. No changes are being made to the physical design of the UHS such that the possibility of a new or different kind of accident would be created. Consequently, these changes do not create the possibility of a new or different kind of accident from those previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed limits on SX pump discharge maximum temperature are based on the results of new and revised design analyses that ensure that the margin of safety is not reduced. The new limits on temperature will ensure that, under the most limiting accident or transient scenario, cooling water will meet the accident analyses SX design temperature limit of 100 °F.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
NRC Branch Chief: Stephen J. Campbell.

*Exelon Generation Company, LLC,
Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

Date of amendment request: March 26, 2009.

Description of amendment request: The proposed amendments would revise the technical specification (TS) 3.5.1, "Emergency Core Cooling System (ECCS) Operating," to delete the existing allowance associated with the automatic depressurization system (ADS) accumulator backup compressed gas system that currently allows a completion time of 72 hours to restore bottle pressure to ≥ 500 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability of an accident previously evaluated. The ADS accumulator backup compressed gas system is designed to maintain the availability of a mitigation system. It is not recognized as the initiator of any accident. The failure of the ADS accumulator backup compressed gas system will not propagate into the onset of an analyzed event. As such, this proposed change does not involve a significant increase in the probability of an accident previously evaluated.

This proposed change does not involve a significant increase in the consequences of an

accident previously evaluated. Deleting the existing allowance associated with the inoperability of the ADS accumulator backup compressed gas system provides assurance that the design function of the ADS SRVs [safety relief valves] assumed in the safety analyses will be achieved under all postulated conditions. The change that deletes the existing allowable completion time for an inoperable ADS accumulator backup compressed gas system is in the conservative direction and will revise the existing non-conservative TS to be consistent with existing licensing requirements for multiple inoperable ADS valves. Therefore, this proposed change will not increase the consequences of an accident previously evaluated in the UFSAR [updated final safety analysis report].

Based on the above information, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does involve the addition of a reserve nitrogen bottle that can be valved in during bottle replacement, however, during the short duration the reserve nitrogen bottle will be valved in the required minimum bottle pressure will be maintained at 1100 psig. The reserve bottle pressure requirement for this short duration ensures that the safety function of the ADS SRVs continues to be met.

Deleting the existing allowance associated with the inoperability of the ADS accumulator backup compressed gas system does not introduce any new or different modes of plant operation, nor does it affect the operational characteristics of any safety-related equipment or systems; as such, no new failure modes are being introduced. The proposed action provides assurance that the design function of the ADS SRVs assumed in the safety analyses will be achieved; and, therefore the LCO [limiting condition for operation] will be met. The change that deletes the existing allowable completion time for an inoperable ADS accumulator backup compressed gas system is in the conservative direction and will revise the existing non-conservative TS to be consistent with existing licensing requirements for multiple inoperable ADS valves.

Based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The margin of safety is determined by the design and qualification of the plant equipment, the operation of the plant within analyzed limits, and the point at which protective or mitigative actions are initiated. The modified TS and TRM [Technical

Requirements Manual] will ensure sufficient nitrogen supply exists to support both the LLS [low-low setpoint] and ADS function of the SRVs plus assumed design leakage with no operator action.

The change that deletes the existing allowable completion time for an inoperable ADS accumulator backup compressed gas system is in the conservative direction and will revise the existing non-conservative TS to be consistent with existing licensing requirements for multiple inoperable ADS valves.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.
NRC Branch Chief: Stephen J. Campbell.

*Florida Power Corporation, et al.,
Docket No. 50-302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida*

Date of amendment request: November 6, 2008, as revised by letter dated August 4, 2009.

Description of amendments request: The proposed change would revise the Crystal River Unit 3 Improved Technical Specifications Surveillance Requirements (SRs); SR 3.8.1.2, SR 3.8.1.6, and SR 3.8.1.10 to restrict the voltage and frequency limits for all emergency diesel generator (EDG) starts. The steady state voltage limits would be revised to be more restrictive (plus or minus 2 percent of the nominal voltage) to accurately reflect the appropriate calculation and the way the plant is operated and tested. The steady state frequency limits will be revised to be more restrictive (plus or minus 1 percent for all EDG starts) to ensure compliance with the plant design bases and the way the plant is operated. Additionally, SR 3.8.1.6 will be revised to clarify that the 10-second start verifies the capability of the EDG to pick up load, and is not the steady state condition. These changes will ensure that the EDGs are capable of supplying power, with the correct voltage and frequency, to the required electrical loads.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LAR [license amendment request] proposes to provide more restrictive voltage and frequency limits for the Emergency Diesel Generators (EDGs) steady state operation. The voltage band is going from a range of greater than or equal to 3933 V [volts] but less than or equal to 4400 V, to greater than or equal to 4077 V but less than or equal to 4243 V. The proposed limits are plus or minus 2% [percent] around the nominal safety-related bus voltage of 4160 V. The Frequency Limits are going from a 2% tolerance band to a 1% tolerance band around the nominal frequency of 60 Hz [hertz] (59.4 Hz to 60.6 Hz) for all starts of the EDGs, at steady state conditions. For fast starts, the voltage and frequency limits at less than or equal to ten seconds will be consistent with the EDG ready matrix setpoints (90.8% voltage and 98% frequency) to allow for the overshoot and undershoot condition that exists while the voltage and frequency values converge on steady state conditions.

The EDGs are a safety-related system that functions to mitigate the impact of an accident with a concurrent loss of offsite power. A loss of offsite power is typically a significant contributor to postulated plant risk and, as such, onsite AC generators have to be maintained available and reliable in the event of a loss of offsite power event. The EDGs are not initiators for any analyzed accident, therefore; the probability for an accident that was previously evaluated is not increased by this change. The revised, voltage and frequency limits will ensure the EDGs will remain capable of performing their design function.

The consequences of an accident refer to the impact on both plant personnel and the public from any radiological release associated with the accident. The EDG supports equipment that is supposed to preclude any radiological release. More restrictive voltage and frequency limits for the output of the EDG restores design margin, and provides assurance that the equipment supplied by the EDG will operate correctly and within the assumed timeframe to perform their mitigating functions.

Until the proposed Crystal River Unit 3 (CR-3) Improved Technical Specifications (ITS) EDG voltage and frequency limits are approved by the NRC, administratively controlled limits have been established in accordance with NRC Administrative Letter 98-10 to ensure all EDG mitigation functions will be performed, per design, in the event of a loss of offsite power. These administrative limits have been determined as acceptable and have been incorporated into the surveillance test procedures under the provisions of 10 CFR 50.59. Periodic testing has been performed with acceptable results. Since EDGs are mitigating components and are not initiators for any analyzed accident, no increased probability of an accident can occur. Since

administrative limits will ensure the EDGs will perform as designed, consequences will not be significantly affected.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Administrative voltage limits were established using verified design calculations and the guidance of NRC Administrative Letter 98-10. These administrative limits will ensure the EDGs will perform as designed. No new configuration is established by this change. The administrative limits for the EDG frequency were determined to be sufficient to account for measurement and other uncertainties.

The proposed amendment will place the administrative limits into the CR-3 ITS. The more restrictive voltage and frequency limits will provide additional assurance that the EDG can provide the necessary power to supply the required safety-related loads during an analyzed accident. The proposed ITS voltage and frequency limits restore the EDG capability to those analyzed by Engineering calculation. No new configuration is established. Therefore, no new or different kind of accident from any previously evaluated can be created.

3. Does not involve a significant reduction in a margin of safety.

The LAR proposes to provide more restrictive steady state voltage and frequency limits for the EDGs. The change in the acceptance criteria for specific surveillance testing provides assurance that the EDGs will be capable of performing their design function. Previous test history has shown that the new limits are well within the capability of the EDGs and are repeatable. The "as-left" settings for voltage and frequency will be adjusted such that they remain within a tight band and this ensures that the "as-found" settings will be in an acceptable tolerance band.

The proposed ITS limits on voltage and frequency will ensure that the EDG will be able to perform all design functions assumed in the accident analyses. Administrative limits are in place to ensure these parameters remain within analyzed limits. As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Northern States Power Company—Minnesota, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: June 24, 2009.

Description of amendment request: The proposed amendments would modify Technical Specification (TS) requirements related to control room envelope (CRE) habitability in accordance with Technical Specification Task Force (TSTF) traveler TSTF-448 Revision 3, "Control Room Habitability," per the consolidated line item improvement process (CLIIP).

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on October 17, 2006 (71 FR 61075), on possible amendments concerning this CLIIP, including a model safety evaluation and a model no significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on January 17, 2007 (72 FR 2022), as part of the CLIIP. In its application dated June 24, 2009, the licensee affirmed the applicability of the following determination.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the

CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and based on its review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Lois M. James.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Exelon Generation Company, LLC, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Units 1 and 2, Will County, Illinois.

Date of amendment request: June 24, 2009.

Brief description of amendment request: The proposed amendment would permanently revise Technical Specification (TS) 5.5.9, "Steam Generator (SG) Program," to exclude portions of the tube below the top of the SG tubesheet from periodic SG tube inspections and plugging or repair. In addition, this amendment would revise the wording of reporting requirements in TS 5.6.9, "Steam Generator (SG) Tube Inspection Report." The proposed changes only affect Byron, Unit No. 2, and Braidwood, Unit 2; however, this action is docketed for both Byron and Braidwood units because the TS are common to Units 1 and 2.

Date of publication of individual notice in Federal Register: July 31, 2009 (74 FR 38234).

Expiration date of individual notice: August 30, 2009 (public comment); September 29, 2009 (hearing requests).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action *see* (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr.resource@nrc.gov.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: August 29, 2008, as supplemented by letters dated March 5 and August 7, 2009.

Brief description of amendment: The amendments modified Technical Specification (TS) 5.6.5, "Core Operating Limits Report (COLR)," by updating the list of references in TS 5.6.5.b to reflect the current analytical methods used to determine the core

operating limits for Palo Verde Nuclear Generating Station Units 1, 2, and 3.

Date of issuance: August 26, 2009.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: Unit 1–174; Unit 2–174; Unit 3–174.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendment revised the Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: November 4, 2008 (73 FR 65688). The supplemental letters dated March 5 and August 7, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 2009.

No significant hazards consideration comments received: No.

Duke Power Company LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 21, 2008.

Brief description of amendments: The amendments implement Technical Specification Task Force (TSTF) Changes Travelers TSTF–479, Revision 0, “Changes to Reflect Revision of [Title 10 of the Code of Federal Regulations] 10 CFR 50.55a,” and TSTF–497, Revision 0, “Limit Inservice Testing [IST] Program SR [Surveillance Requirements] 3.0.2 Application to Frequencies of 2 Years or Less.” TSTF–479 and TSTF–497 revise the technical specification's Administrative Controls section pertaining to requirements for the IST Program, consistent with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers (ASME), *Boiler and Pressure Vessel Code* Class 1, Class 2, and Class 3.

Date of issuance: August 17, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 252 and 232.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the licenses and the technical specifications.

Date of initial notice in Federal Register: April 3, 2009 (74 FR 18253).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 2009.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: September 9, 2008, as supplemented by letter dated April 24, 2009.

Brief description of amendment: This amendment modified Technical Specification 3.3.6.1, “Primary Containment Isolation Instrumentation,” to lower the Group 1 isolation valves reactor water level isolation signal from Level 2 to Level 1.

Date of issuance: August 18, 2009.

Effective date: As of its date of issuance and shall be implemented prior to entry into Mode 2 during startup from refueling outage 20.

Amendment No.: 214.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: December 2, 2008 (73 FR 73353). The supplemental letter dated April 24, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 5, 2009, as supplemented by letters dated April 17 and June 22, 2009.

Brief description of amendment: The amendment updates the reactor vessel heatup and cooldown limit curves and the low-temperature over-pressure protection curves.

Date of issuance: August 17, 2009.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 262.

Facility Operating License No. DPR–26: The amendment revised the License and the Technical Specifications.

Date of initial notice in Federal Register: May 19, 2009 (74 FR 23443).

The April 17 and June 22, 2009, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 17, 2009.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 16, 2009.

Description of amendment request: This amendment changes the name of the Licensee and Co-owner from “FPL Energy Seabrook, LLC” to “NextEra Energy Seabrook, LLC.”

Date of issuance: August 21, 2009.

Effective date: As of its date of issuance and shall be implemented within 30 days.

Amendment No.: 122.

Facility Operating License No. NPF–86: The amendment revised the License, Appendix B—Environmental Protection Plan, and Appendix C—Additional Conditions.

Date of initial notice in Federal Register: June 2, 2009 (74 FR 26434).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 2009.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), Oswego County, New York

Date of application for amendment: March 9, 2009.

Brief description of amendment: The amendment revises the Technical Specification (TS) testing frequency for the Surveillance Requirement (SR) in TS 3.1.4, “Control Rod Scram Times,” by extending the frequency of SR 3.1.4.2, from “120 days cumulative operation in Mode 1” to “200 days cumulative operation in Mode 1.” This change is based on Nuclear Regulatory Commission-approved TS Task Force (TSTF) Change Traveler, TSTF–460–A, Revision 0, “Control Rod Scram Time Testing Frequency.” These changes were described in a Notice of Availability for Consolidated Line Item

Improvement Process published in the **Federal Register** on August 23, 2004 (69 FR 51864).

Date of issuance: August 19, 2009.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 132.

Renewed Facility Operating License No. NPF-069: The amendment revises the License and TSs.

Date of initial notice in Federal Register: May 19, 2009 (74 FR 23447).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 2009.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, LLC, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 15, 2009.

Brief description of amendment: The amendment revised the MNGP Technical Specifications (TS), deleting paragraph d (regarding limitation of working hours of personnel who perform safety-related functions) of TS 5.2.2, "Unit Staff."

Date of issuance: August 19, 2009.

Effective date: As of the date of issuance and shall be implemented by October 1, 2009.

Amendment No.: 163.

Facility Operating License No. DPR-22: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in Federal Register: June 16, 2009 (74 FR 28578).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 2009.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: April 15, 2009.

Brief description of amendments: The amendments delete those portions of the Technical Specifications superseded by Title 10 of the *Code of Federal Regulations* Part 26, Subpart I.

Date of issuance: August 19, 2009.

Effective date: As of the date of issuance and shall be implemented by October 1, 2009.

Amendment Nos.: 193, 182.

Facility Operating License Nos. DPR-42 and DPR-60: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: June 16, 2009 (74 FR 28578).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 2009.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (DCPP), San Luis Obispo County, California

Date of application for amendments: May 5, 2009.

Brief description of amendments: The amendments revised the DCPD Technical Specification (TS) 5.2.2, "Unit Staff," to eliminate working hour restrictions in paragraph d of TS 5.2.2 to support compliance with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26. The change is consistent with U.S. Nuclear Regulatory Commission (NRC)-approved Revision 0 to TS Task Force (TSTF) Improved Technical Specification change traveler, TSTF-511, "Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26." The availability of this TS improvement was announced in the **Federal Register** on December 30, 2008 (73 FR 79923), as part of the consolidated line item improvement process.

Date of issuance: August 19, 2009.

Effective date: As of its date of issuance and shall be implemented by October 1, 2009.

Amendment Nos.: Unit 1-206; Unit 2-207.

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: June 16, 2009 (74 FR 28579).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 2009.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: December 4, 2008.

Brief description of amendment: The amendment revises the Technical Specifications to allow refueling operations with both containment personnel interlock doors to be open under administrative control consistent

with Technical Specification Task Force (TSTF) Travelers TSTF-68 and TSTF-312. In support of this amendment request, the licensee recalculated the fuel gas gap fractions for its design-basis fuel handling accident and has justified a shorter decay time of 72 hours utilizing the alternative source term methodology.

Date of issuance: August 12, 2009

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 107

Renewed Facility Operating License No. DPR-18: Amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: March 10, 2009 (74 FR 10311)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2009.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50-244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 23, 2009.

Brief description of amendment: The amendment deletes paragraph d of Technical Specification (TS) 5.2.2, "Plant Staff." The amendment is consistent with Nuclear Regulatory Commission approved Revision 0 to the Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF-511, "Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR [Title 10 of the *Code of Federal Regulations*] Part 26." The availability of this TS improvement was announced in the **Federal Register** on December 30, 2008 (73 FR 79923) as part of the consolidated line item improvement process.

Date of issuance: August 12, 2009.

Effective date: As of the date of issuance to be implemented with the implementation of the new 10 CFR Part 26, Subpart I requirements.

Amendment No.: 108.

Renewed Facility Operating License No. DPR-18: Amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: April 21, 2009 (74 FR 18256).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2009.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 3, 2009.

Brief description of amendments: The amendments revised the Technical Specifications (TS) to eliminate working hour restrictions from TS 6.2.2 to support compliance with Title 10 of the Code of Federal Regulations (10 CFR) Part 26. The request is consistent with the guidance contained in the U.S. Nuclear Regulatory Commission (NRC)-approved TS Task Force (TSTF) Improved Standard Technical Specification change traveler, TSTF-511, Revision 0, "Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26." The availability of this improvement was announced in the **Federal Register** on December 30, 2008 (73 FR 79923), as part of the Consolidated Line Item Improvement Process.

Date of issuance: August 18, 2009.

Effective date: As of the date of issuance and shall be implemented by October 1, 2009.

Amendment Nos.: Unit 1-192; Unit 2-180.

Facility Operating License Nos. NPF-76 and NPF-80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: June 16, 2009 (74 FR 28579).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendments: March 27, 2008, as supplemented by letters dated December 19, 2008, February 9, April 24, and May 26, 2009.

Description of amendment request: The amendments revised the technical specifications (TSs) to adopt the content of Technical Specification Task Force (TSTF) change traveler TSTF448, Revision 3, "Control Room Habitability." Specifically, the amendments revised TS 3.7.3, "Control Room Emergency Ventilation (CREV) System," and added TS 5.5.13, "Control Room Envelope Habitability Program." The amendments also added a new license condition regarding initial performance of the new surveillance

and assessment requirements of the revised TSs.

Date of issuance: August 18, 2009.

Effective date: Date of issuance, to be implemented within 60 days.

Amendment Nos.: 275, 302, and 261. *Renewed Facility Operating License Nos. DPR-33, DPR-52, and DPR-68:* Amendments revised the Licenses and Technical Specifications.

Date of initial notice in Federal Register: August 26, 2008 (73 FR 50362) and revised on January 27, 2009 (74 FR 4775). The supplements dated February 9, April 24, and May 26, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 21, 2008.

Brief description of amendments: The amendments revised Sequoyah Nuclear Plant's Updated Final Safety Analysis Report (UFSAR) to require an inspection of each ice condenser within 24 hours of experiencing a seismic event greater than or equal to an operating basis earthquake (i.e., 1/2 of a safe shutdown earthquake) within the 5-week period after ice basket replenishment is completed. This will confirm that ice condenser lower inlet doors have not been blocked by ice fallout.

The proposed amendments provided a procedural requirement to confirm the ice condenser maintains the ice condenser generic qualification as set forth in the UFSAR. Justification for the use of the proposed procedural requirement is based on reasonable assurance that the ice condenser lower inlet doors will open following a seismic event during the 5-week period and the low probability of a seismic event occurring coincident with or subsequently followed by a design basis accident.

Date of issuance: August 14, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance. The UFSAR changes shall be implemented in the next periodic update made in accordance with 10 CFR 50.71(e).

Amendment Nos.: 325 and 317. *Facility Operating License Nos. DPR-77 and DPR-79:* Amendments changed the licenses.

Date of initial notice in Federal Register: January 13, 2009 (74 FR 1715).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 14, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 27th day of August, 2009.

For The Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9-21389 Filed 9-4-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-27; NRC-2009-0205]

Pacific Gas and Electric Company; Humboldt Bay Independent Spent Fuel Storage Installation; Notice of Issuance of Amendment to Materials License No. SNM-2514

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Amendment to Materials License SNM-2514.

DATES: A request for a hearing must be filed by November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Shana R. Helton, Senior Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, Mail Stop EBB-3D-02M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 492-3284; e-mail: shana.helton@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 17, 2005, the U.S. Nuclear Regulatory Commission (NRC) issued NRC Materials License No. SNM-2514 to the Pacific Gas and Electric Company (PG&E) for the Humboldt Bay Independent Spent Fuel Storage Installation (ISFSI), located in Humboldt County, California. The license authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Humboldt Bay Power Plant in an ISFSI at the power plant site for a term

of 20 years. The NRC staff also issued an Environmental Assessment and Finding of No Significant Impact related to the issuance of the initial ISFSI license on November 16, 2005, in accordance with the National Environmental Policy Act, and in conformance with the applicable requirements of 10 CFR Part 51.

On April 20, 2009, PG&E submitted an application to NRC, in accordance with 10 CFR Part 72, requesting an amendment to NRC Materials License No. SNM-2514. PG&E's application requested that the ISFSI license be amended to allow for the relocation of the Humboldt Bay ISFSI quality assurance (QA) requirements from the Diablo Canyon Power Plant Part 50 QA plan to the Humboldt Bay Power Plant Part 50 QA plan.

The current license states that, prior to the termination of the Part 50 license for the Diablo Canyon Power Plant, PG&E would be required to submit a 10 CFR Part 72, Subpart G, compliant QA plan, for the Humboldt Bay ISFSI, to the NRC for approval. The proposed amendment seeks to link this requirement to the termination of the Humboldt Bay Power Plant Part 50 license rather than the termination of the Diablo Canyon Power Plant Part 50 license. The proposed amendment retains the requirement for PG&E to submit a Subpart G compliant QA plan to the NRC for approval, prior to terminating the controlling Part 50 license.

In accordance with 10 CFR 72.16, a Notice of Docketing was published in the **Federal Register** on May 14, 2009. Pursuant to 10 CFR 72.46, the NRC has approved and issued Amendment No. 2 to Materials License No. SNM-2514 held by PG&E for the receipt, possession, transfer, and storage of spent fuel at the Humboldt Bay ISFSI. Amendment No. 2 authorizes relocating the Humboldt Bay ISFSI QA plan from the Diablo Canyon Power Plant Part 50 QA Program to the Humboldt Bay Power Plant Part 50 QA Plan. Amendment No. 2 is effective as of the date of issuance.

Amendment No. 2 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. The NRC has made appropriate findings, as required by the Act and the NRC's rules and regulations in 10 CFR Chapter I, which are set forth in Amendment No. 2. The issuance of Amendment No. 2 satisfied the criteria specified in 10 CFR 51.22(c)(11) for a categorical exclusion. Thus, the preparation of an environmental assessment or an environmental impact statement is not required.

II. Opportunity To Request a Hearing

In accordance with 10 CFR 72.46(b)(2), the staff has determined that this license amendment, requesting the relocation of the Humboldt Bay ISFSI QA plan, does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

Any person whose interest may be affected by this proceeding and who desires to have this action rescinded or modified must file a request for a hearing and, a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). All documents filed in NRC adjudicatory proceedings, including documents filed by interested governmental entities participating under 10 CFR 2.315(c) and any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, must be filed in accordance with the E-Filing rule. The E-Filing rule requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, they can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at MSHD.Resource@nrc.gov.

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR 2.302(g), file an exemption request with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier,

express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)-(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by November 9, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the

proceeding on the requester's interest; and

The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC documents that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is

designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

The NRC has prepared a Safety Evaluation Report (SER) that documents the staff's review and evaluation of the amendment. In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents related to this action, including the application for amendment and supporting documentation and the SER, are available electronically at the NRC's Electronic Reading Room, at: <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession Number for the application, dated April 20, 2009, is ML091190693. The ADAMS Accession Number for the staff's SER is ML092400409.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 28th day of August, 2009.

For the Nuclear Regulatory Commission.

Shana R. Helton,

*Senior Project Manager, Licensing Branch,
Division of Spent Fuel Storage and
Transportation, Office of Nuclear Material
Safety and Safeguards.*

[FR Doc. E9-21613 Filed 9-4-09; 8:45 am]

BILLING CODE 7590-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11860 and #11861]

North Carolina Disaster # NC-00020

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 08/31/2009.

Incident: Severe Storms and Flooding.

Incident Period: 08/12/2009.

Effective Date: 08/31/2009.

Physical Loan Application Deadline Date: 10/30/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Craven.

Contiguous Counties:

North Carolina: Beaufort; Carteret; Jones; Lenoir; Pamlico; Pitt.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11860 6 and for economic injury is 11861 0.

The States which received an EIDL Declaration # are North Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 31, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9-21508 Filed 9-4-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Advisory Committee Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting will be open to the public.

DATES: The meeting will be held on September 22, 2009 from 9 a.m. to 5 p.m. and on September 23, 2009, from 9 a.m. to 5 p.m. Eastern Standard Time.

ADDRESSES: On Tuesday, September 22, 2009, the meeting will be held at the U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, in the Eisenhower Conference room, located on the 2nd floor, side b, and on Wednesday, September 23, 2009, in the Administrator's Large Conference room, located on the 7th floor.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The Advisory Committee on Veterans Business Affairs serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration.

The purpose of the meeting is scheduled as a full committee meeting. The agenda will include presentations regarding "Business Counseling and Training."

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Advisory Committee on Veterans Business Affairs must contact Cheryl Simms, Program Liaison, by September 4, 2009, by fax or e-mail in order to be placed on the agenda. Cheryl Simms, Program Liaison, U.S. Small Business Administration, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416, *Telephone number:* (202) 619-1697, *Fax number:*

202-481-6085, *e-mail address:* cheryl.simms@sba.gov.

Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Program Liaison at (202) 619-1697; *e-mail address:* cheryl.simms@sba.gov, SBA, Office of Veterans Business Development, 409 3rd Street, SW., Washington, DC 20416. For more information, please visit our Web site at <http://www.sba.gov/vets>.

Dated: August 18, 2009.

Meaghan Burdick,

SBA Committee Management Officer.

[FR Doc. E9-21506 Filed 9-4-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60559; File No. SR-ISE-2009-27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto to Adopt Rules Implementing the Options Order Protection and Locked/Crossed Market Plan

August 21, 2009.

Correction

In notice document E9-20788 beginning on page 44425 in the issue of Friday, August 28, 2009, make the following correction:

On page 44425, in the second column, the date underneath the subject was inadvertently omitted. The date should read as set forth above.

[FR Doc. Z9-20788 Filed 9-4-09; 8:45 am]

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension: Rule 2a-7, SEC File No. 270-258, OMB Control No. 3235-0268.

Notice is hereby given that under the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

Rule 2a-7 (17 CFR 270.2a-7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act") governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually \$1.00. The rule exempts money market funds from the valuation requirements of the Act and, subject to certain risk-limiting conditions, permits money market funds to use the "amortized cost method" of asset valuation or the "penny-rounding method" of share pricing.

Rule 2a-7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value ("NAV"). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's adviser. These procedures and guidelines typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities and asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N-SAR (17 CFR 249.330) describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N-SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a-7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have

established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a-7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that each of 757¹ money market funds spends a total of approximately 410 hours² of professional time (at \$193 per hour)³ to record credit risk analyses and determinations regarding adjustable rate securities, asset backed securities and securities subject to a demand feature or guarantee, for a total of approximately \$59,901,410. The staff further estimates that each of 9 new money market funds spends a total of 15.5 hours of director, legal, and support staff time at a total cost of approximately \$50,487.30 to adopt procedures designed to stabilize the fund's NAV and guidelines regarding the delegation of certain responsibilities to the fund's adviser.⁴ The staff further estimates that on average each of 189 money market funds spends a total of 2.4 hours of director and legal time at a total cost of approximately \$442,260 to review and amend written procedures and guidelines each year.⁵ Finally, the staff estimates that each of 13 money market funds that experience a change in certain eligibility standards for portfolio securities or an event of default or insolvency relating to portfolio securities spends a total of one and a half hours of professional legal time documenting board determinations and notifying the Commission regarding the event, for a total of \$5265. Thus, Commission staff estimates the total annual burden of the rule's information collection requirements are 310,983

¹ See Investment Company Institute, *Trends in Mutual Fund Investing: April 2009* (May 28, 2009), http://www.ici.org/highlights/trends_04_09. These include registered money market funds and series of registered funds.

² This average is based on discussions with individuals at money market funds and their advisers. The actual number of burden hours may vary significantly depending on the type and number of portfolio securities held by individual funds.

³ The estimated hourly cost was based on the weighted average annual salaries reported for senior business analysts, accountants, floor supervisors, and portfolio managers in SIFMA's *Management & Professional Earnings in the Securities Industry 2008* (Sept. 2008), modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

⁴ This estimate is based on information from Lipper Inc.'s LANA database for the period of January 1, 2007 through December 31, 2008.

⁵ For PRA purposes we assumed that on average 25% of money market funds would review and update their procedures on an annual basis.

hours⁶ at an annual cost of \$60,399,422.⁷

The Commission staff estimate of 310,983 burden hours is a decrease from the previous estimate of 1,034,800 hours. The decrease is primarily attributable to the decrease in the number of money market funds and updated information from money market funds regarding hourly burdens, including significant differences in burden hours reported by the funds surveyed in this submission year than those reported by funds in prior submission years.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records required under rule 2a-7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.⁸ Commission staff estimates that the amount an individual fund may spend ranges from \$100 per year to \$300,000. Based on a cost of \$0.0051295 per dollar of assets under management for small funds, \$0.0005041 per dollar assets under management for medium funds, and \$0.0000009 per dollar of assets under management for large funds,⁹ the

⁶ This estimate is based on the following calculation: 310,370 hours + 139.5 hours + 453.6 hours + 19.5 hours = 310,982.6 hours.

⁷ A significant portion of the recordkeeping burden involves organizing information that the funds already collect when initially purchasing securities. In addition, when a money market fund analyzes a security, the analysis need not be presented in any particular format. Money market funds therefore have a choice of methods for maintaining these records that vary in technical sophistication and formality (e.g., handwritten notes, computer disks, etc.). Accordingly, the cost of preparing these documents may vary significantly among individual funds. The burden hours associated with filing reports to the Commission as an exhibit to Form N-SAR are included in the PRA burden estimate for that form.

⁸ The amount of assets under management in individual money market funds ranges from approximately \$300,000 to approximately \$162 billion.

⁹ For purpose of this PRA submission, Commission staff used the following categories for fund sizes: (i) Small—money market funds with \$50 million or less in assets under management, (ii) medium—money market funds with more than \$50 million up to and including \$1 billion in assets under management; and (iii) large—money market funds with more than \$1 billion in assets under management.

staff estimates compliance with rule 2a-7 costs the fund industry approximately \$72.4 million per year.¹⁰ Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a-7. Based on a cost of \$0.0000132 per dollar of assets under management for large funds, the staff estimates that total annualized capital/startup costs range from \$0 for small funds to \$48.8 million for all large funds. Commission staff further estimates that, even absent the requirements of rule 2a-7, money market funds would spend at least half of the amount for capital costs (\$24.4 million) and for record preservation (\$36.2 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

The collections of information required by rule 2a-7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at Shagufta_Ahmed@omb.eop.gov; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-21618 Filed 9-4-09; 8:45 am]

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¹⁰ The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of \$1 billion under management in small funds, \$126.8 billion under management in medium funds and \$3.7 trillion under management in large funds, the costs of preservation were estimated as follows: $((0.0051295 \times \$1 \text{ billion}) + (0.0005041 \times \$126.8 \text{ billion}) + (0.0000009 \times \$3.7 \text{ trillion})) = \72.38 million .

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28894; File No. 812-13643]

AdvisorOne Funds and CLS Investments, LLC; Notice of Application

August 31, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

Summary of Application: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: AdvisorOne Funds (the "Trust") and CLS Investments, LLC (the "Adviser") (collectively, "Applicants").

Filing Dates: The application was filed on March 16, 2009, and amended on August 26, 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 25, 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 reasons 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants, Gemini Fund Services, LLC, 450 Wireless Boulevard, Hauppauge, New York 11788-0132.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel at (202) 551-6990, or Jennifer L. Sawin, 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, a Delaware statutory trust, is registered under the Act as an open-end management investment company and currently consists of six separate funds: The Amerigo Fund, Clermont Fund, Berolina Fund, Reservoir Fund, Descartes Fund, and Liahona Fund.¹ Each Fund has its own investment objective, policies, and restrictions.

The Adviser, a limited liability company organized under the laws of the State of Nebraska, is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser serves as the investment adviser of each Fund and will serve as the investment adviser of each of the New Funds. The Adviser's primary business activity is providing investment management services to the Funds pursuant to an investment advisory agreement with the Trust (the "Advisory Agreement"). The Advisory Agreement was approved by the board of trustees of the Trust ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (the "Independent Trustees") and, except with respect to the New Funds, was approved by the initial shareholder of each Fund. With respect to the New Funds, the Advisory Agreement will be approved by the initial shareholder of the Fund.

2. Under the terms of the Advisory Agreement, the Adviser is responsible for formulating each Fund's investment program and for making day-to-day investment decisions and engaging in portfolio transactions. For the investment management services that it provides to each Fund, the Adviser

¹ Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (collectively, the "Funds" and each, a "Fund"). A Post-Effective Amendment to the Trust's registration statement relating to the CLS Risk-Managed Enhanced Income Fund, the CLS Fixed Income Fund and the CLS Concentrated Allocation Fund (the "New Funds") has been filed with the Commission and is not yet effective. The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

receives the fee specified in the Advisory Agreement from each Fund based on the Fund's average daily net assets. The Advisory Agreement permits the Adviser to retain one or more unaffiliated subadvisers ("Subadvisers"), at the Adviser's own cost and expense, for the purpose of managing the investment of the assets of one or more Funds of the Trust. The Adviser intends to enter into subadvisory agreements with various Subadvisers ("Subadvisory Agreements") to provide investment advisory services to one or more of the Funds.² Each Subadviser currently is or will be registered as an investment adviser under the Advisers Act. The Adviser will monitor and evaluate each Subadviser's investment programs and will recommend to the Board whether Subadvisory Agreements should be renewed, modified or terminated. The Subadvisory Agreement with each Subadviser will be initially approved by the Board, including a majority of the Independent Trustees. Each Subadviser will have discretionary authority to invest that portion of a Fund's assets assigned to it. The Adviser will compensate each Subadviser out of the fees that are paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Subadvisers to manage all or a portion of the assets of a Fund, pursuant to a Subadvisory Agreement and enter into and materially amend Subadvisory Agreements without shareholder approval (the "Manager of Managers Structure"). The Applicants will not enter into a Subadvisory Agreement with any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or of the Adviser, other than by reason of serving as Subadviser to one or more Funds ("Affiliated Subadviser"), unless shareholder approval of the Subadvisory Agreement with that Affiliated Subadviser is obtained. The requested relief will not apply with respect to Affiliated Subadvisers.

Applicants' Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the

vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) 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 provision of the Act, or from any rule thereunder, 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. Applicants believe that their requested relief meets this standard.

3. Applicants state that the shareholders expect the Adviser and the Board to select the Subadviser for a Fund that is best suited to achieve the Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers with respect to the Funds utilizing the Manager of Managers Structure is substantially equivalent to the role of the individual portfolio managers employed by traditional investment company advisory firms. Applicants believe that permitting the Adviser to perform those duties for which shareholders of the Funds are paying the Adviser without incurring unnecessary delay or expense will be appropriate in the interests of Fund shareholders and will allow each Fund to operate more efficiently. Applicants also note that the Advisory Agreement will remain fully subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f-2 under the Act, including the requirement for shareholder voting.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that sub-advised Fund to the public.

2. The prospectus for each Fund relying on the order requested in this application will disclose the existence, substance, and effect of any order

granted pursuant to this application. Each Fund relying on the order requested in this application will hold itself out to the public as utilizing the Manager of Managers Structure described in this application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of a new Subadviser, the affected Fund shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement. To meet this obligation, the Fund will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Boards will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund that is sub-advised, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will: (i) Set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisers to manage all or a part of a Fund's assets; (iii) allocate and, when appropriate, reallocate a Fund's assets among one or more Subadvisers; (iv) monitor and evaluate the performance of Subadvisers; and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Fund's investment objective, policies and restrictions.

² Currently, the Reservoir Fund is sub-advised by Horizon Investment, LLC, a limited liability company organized under the laws of the State of North Carolina and registered an investment adviser under the Investment Advisers Act of 1940. The Reservoir Fund's Subadvisory Agreement received shareholder approval.

8. No trustee or officer of the Trust or a Fund, or director, manager or officer of the Adviser, will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21494 Filed 9-4-09; 8:45 am]

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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 10, 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 Paredes, 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 10, 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: September 3, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-21716 Filed 9-3-09; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-40; File No. S7-19-09]

Privacy Act of 1974: Establishment of a System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice to establish a system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission ("Commission" or "SEC") gives notice of a proposed Privacy Act system of records: "Ethics Conduct Rules Files (SEC-60)." This system will contain information related to applicable SEC Ethics Conduct Rules (currently found at 17 CFR Part 200 Subpart M), including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

DATES: The proposed system will become effective October 13, 2009, unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before October 8, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-19-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-19-09. This file number should be included on the subject line if e-mail is used. To help us 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/other.shtml>). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, Office of Information Technology, 202-551-7209.

SUPPLEMENTARY INFORMATION: The Commission gives notice of the proposed establishment of a system of records, entitled "Ethics Conduct Rules Files (SEC-60)." The system will contain information related to the SEC's "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission" ("Ethics Conduct Rules"), currently located at 17 CFR Part 200 Subpart M, including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

On May 22, 2009, to consolidate related responsibilities, the Commission transferred all the Commission's Ethics Rules responsibilities that resided in the Office of Human Resources (consisting particularly of the administration of all of the SEC Ethics Conduct Rules files) to the Commission's Ethics Office. Consistent with the transfer of responsibilities, the Commission is establishing a system of records in the Ethics Office to maintain records related to the Ethics Conduct Rules applicable to Commission Members and employees, including reports on securities transactions, holdings, and accounts required by applicable Federal securities laws and regulations.

The Commission has submitted a report of the system of records to the Senate Committee on Homeland Security and Government Affairs, the

House Committee on Government Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," as amended on February 20, 1966 (61 FR 6435).

Accordingly, the Commission is establishing a system of records to read as follows:

SEC-60

SYSTEM NAME:

Ethics Conduct Rules Files.

SYSTEM LOCATION:

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEC Members and employees, past and present.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to the SEC's "Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission" ("Ethics Conduct Rules"), currently located at 17 CFR Part 200 Subpart M, including outside employment and activities, and covered securities transactions, securities holdings and securities accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal securities laws (15 U.S.C. 77s, 78w, 77sss, 80a-37 and 80b-11) and the regulations promulgated thereunder, including the Ethics Conduct Rules currently located at 17 CFR Part 200 Subpart M.

PURPOSE(S):

For use by authorized SEC Ethics Office personnel, designated by the Ethics Counsel, and from time to time certain other SEC personnel, designated by the Ethics Counsel in his or her discretion, in connection with their official functions related to administering and supervising compliance with the Commission's Ethics Conduct Rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To a Federal, State, or local law enforcement agency if the disclosing

agency becomes aware of a violation or potential violation of law or regulation;

2. To a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena;

3. To a source when necessary to obtain information relevant to a conflict of interest or securities law investigation or decision;

4. To the National Archives and Records Administration or the General Services Administration in records management inspections;

5. To the Office of Management and Budget during legislative coordination on private relief legislation;

6. To the Department of Justice or in certain legal proceedings when the disclosing agency, and employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation;

7. To reviewing officials in a new office, department or agency when an employee transfers from one position to another subject to the Ethics Conduct Rules;

8. To a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record;

9. To interns, grantees, experts and contractors who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

10. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission 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 this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

11. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or metal file cabinets.

RETRIEVABILITY:

Records may be retrieved by the individual's name or other personal identifiers, as well as non-identifying information. Information regarding individuals may be obtained through the use of cross-reference methodology.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. Access is limited to those personnel whose official duties require access. Paper records are maintained in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Computerized records are safeguarded through use of access codes and information technology security.

RETENTION AND DISPOSAL:

These records will be maintained for 6 years or otherwise in accordance with records schedules of the Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

The Ethics Counsel and the Designated Agency Ethics Official, Office of the General Counsel, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1050.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Information is provided by current Members and employees of the Commission or their designees in accordance with the requirements of the SEC Ethics Conduct Rules.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 1, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9-21444 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60586; File No. SR-BATS-2009-026]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend BATS Fee Schedule to Impose Fees for Ports Used for Order Entry and Receipt of Market Data

August 28, 2009.

On July 21, 2009, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the fee schedule applicable to Members³ and non-members of the Exchange with respect to ports used to enter orders into Exchange systems and to receive data from the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 28, 2009.⁴ The Commission received no comments regarding the proposal. On August 27, 2009, the Exchange filed Amendment

No. 1 to the proposed rule change.⁵ This order grants approval of the proposed rule change.

BATS proposes to begin charging a monthly fee for ports used to enter orders into the Exchange's trading system and to receive data from the Exchange.⁶ Specifically, the Exchange proposes to charge \$250.00 per month per pair⁷ of any port type other than a Multicast PITCH Spin Server Port or a GRP Port. Thus, the proposed charge will apply to all Exchange FIX, FIXDROP, DROP, TCP PITCH, TCP FAST PITCH, and TOP ports.⁸ In addition, the Exchange proposes to provide all Exchange constituents that receive the Exchange's Multicast PITCH feed with 12 pairs of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports.⁹ The Exchange proposes to charge such customers \$250.00 per month per additional pair of GRP Ports or additional set of 12 pairs of Multicast PITCH Spin Server Ports. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast PITCH Spin Server Ports and GRP Ports from the Exchange.

The proposed rule change will apply to Members that obtain ports for direct access to the Exchange, non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, and market data recipients. The Exchange states that it has previously provided ports free of charge to all Members and non-members that use such ports for order entry to the Exchange or for receipt of market data. However, the Exchange states that its infrastructure costs have increased over time. In addition, the Exchange believes

that providing ports free of charge has not encouraged Members and non-members to reserve and maintain ports efficiently, but rather, has led to a significant number of ports that are reserved and enabled by such market participants, but are never used or are under-used. Accordingly, the Exchange believes that the imposition of port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,¹¹ which requires the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using the Exchange's facilities, and Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,¹³ which requires that the rules of an exchange not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹⁴ which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and not unreasonably discriminatory.

The Commission believes that the proposed port fees are equitably allocated among Members and non-members and do not unfairly or unreasonably discriminate between

⁵ In Amendment No. 1, the Exchange replaced the bracketed "[July]" with "[August]" in the proposed rule text to reflect the fact that the current fee schedule is dated August 1, 2009. Because the change in Amendment No. 1 is technical in nature, it is not subject to notice and comment.

⁶ The Commission notes that BATS will implement the proposed port fees commencing on the first day of the month immediately following Commission approval of this proposed rule change (or on the date of approval, if on the first business day of a month). See Notice, *supra* note 4.

⁷ Each pair of ports will consist of one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

⁸ BATS FIX ports are the only ports that may be used to send orders and related instructions to the Exchange. All other port types, including Multicast PITCH and GRP Ports, permit Members and non-members to receive information from the Exchange.

⁹ The Exchange's proposal to provide certain ports free of charge to Multicast PITCH customers is designed to encourage use of the Exchange's Multicast PITCH feed because it is a relatively new offering by the Exchange and because the Exchange believes that the feed is its most efficient feed and will reduce infrastructure costs for both the Exchange and those who utilize the feed.

¹⁰ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ 17 CFR 242.603(a).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer that has been admitted to membership in the Exchange. See BATS Rule 1.5(n).

⁴ Securities Exchange Act Release No. 60364 (July 22, 2009), 74 FR 37285 ("Notice").

customers, issuers, brokers, or dealers because the proposed port fees do not distinguish among the type of participant but rather are the same for all members and non-members. The Commission also believes that BATS was subject to significant competitive pressure to act equitably, fairly, and reasonably in setting the port fees, in light of the highly competitive nature of the market for execution and routing services.¹⁵ The Commission further notes that the Exchange's proposed port fees are consistent with similar port fees charged by other exchanges.¹⁶

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-BATS-2009-026), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-21455 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60585; File No. SR-CBOE-2009-053]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit FLEX Options on Securities Eligible for Non-FLEX Options Trading and on Corporate Debt Securities

August 28, 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

¹⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

¹⁶ See, e.g., Rule 7015 of The NASDAQ Stock Market LLC ("NASDAQ") (setting forth, among other fees for access services, port fees charged to members and non-members used to enter orders into NASDAQ trading systems). See also Securities Exchange Act Release Nos. 60546 (August 20, 2009), 74 FR 43184 (August 26, 2009) (SR-NASDAQ-2009-058) (increasing the monthly fee for each port used to enter orders in NASDAQ trading systems from \$400 per month to \$500 per month); 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009) (SR-BX-2009-004) (establishing fees for ports used by members to enter orders); 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR-BX-2009-005) (establishing, among other fees, port fees for accessing market data).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

19, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to amend certain CBOE rules to (1) permit the Exchange to list Flexible Exchange Options ("FLEX Options") on securities that are eligible for Non-FLEX options trading, even if the Exchange does not list Non-FLEX options on such securities, and (2) designate Corporate Debt Security Options as eligible for FLEX Options trading. The text of the rule proposal is available on the Exchange's website (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The first change being proposed by this filing is to permit CBOE to list FLEX Options on securities that are eligible for Non-FLEX options trading, even if the Exchange does not list Non-FLEX options on such securities. Currently, CBOE's rules only permit FLEX Options on those securities on

which the Exchange lists and trades Non-FLEX options. For various reasons, exchange traded options are not listed on every NMS stock, index or other products approved for options trading. The Exchange recognizes that market participants may want access to options on such securities, in addition to the certainty and safeguards of a regulated and standardized marketplace. As an alternative to the over-the-counter marketplace, CBOE proposes to increase the spectrum of products that are eligible for FLEX Options trading, even if the Exchange does not list Non-FLEX options on such securities. In order to effect this change, the Exchange is proposing to amend its Flexible Exchange Options rules and other product rules (e.g., Range Options, binary options, Credit Options) that currently designate such products as eligible for FLEX Options trading to permit FLEX Options trading even if Non-FLEX options on such securities are not traded.

The second change being proposed by this filing is to designate Corporate Debt Security Options as eligible for FLEX Option trading. To effect this change, the Exchange is proposing to adopt new rule 28.17, which is similar to other FLEX Option designation rules for other products that have stand alone chapters (e.g., Range Options, binary options, Credit Options). The Exchange would like to offer FLEX Option trading on Corporate Debt Security Options as an alternative to similar products trading in the over-the-counter marketplace.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")⁵ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the FLEX Option changes proposed in this rule filing will provide market investors with additional means to manage their risk exposures and carry

⁵ 15 U.S.C. 78s(b)(1).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

out their investment objectives with exchange-traded products.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

As for permitting FLEX Options on Corporate Debt Security Options, the Exchange notes that new products brought up and approved by the SEC during the past couple of years (e.g., Range Options, binary options, Credit Options) have contained rules designating them as FLEX eligible. As a result, the Exchange believes the proposed change is consistent with existing rules for products and conforms the rules for Corporate Debt Security Options to other existing product rules. For the foregoing reasons, the Exchange believes the rule filing qualifies for expedited effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 of the Act.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2009-053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2009-053 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-21582 Filed 9-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60590; File No. SR-NASDAQ-2009-078]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the Nasdaq Listing Rules To Make Certain Conforming and Technical Changes

August 31, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 18, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to revert to the previously approved requirements of certain listing standards that were inadvertently changed when adopting the new Listing Rules, and to complete certain conforming changes to the Listing Rules that were not fully implemented with their adoption. The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.⁴

5415. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) No change.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

(b) When the Company's Primary Equity Security is not listed on [either] the Global Market or is *not* a Covered Security, the preferred stock and/or secondary class of common stock may be listed on the Global Market so long as it satisfies the initial listing criteria for Primary Equity Securities set forth in Rule 5405.

* * * * *

5460. Continued Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) When the Company's Primary Equity Security of the Company is listed on the Global Market or *is a Covered Security* [another National Securities Exchange], the preferred stock or secondary class of common stock must meet all of the requirements set forth in (1) through (5) below.

- (1) At least 100,000 Publicly Held Shares;
- (2) A Market Value of Publicly Held Shares of at least \$1,000,000;
- (3) Minimum bid price of at least \$1 per share;
- (4) At least 100 Public Holders; and
- (5) At least two registered and active Market Makers.

(b) When the Primary Equity Security of the Company is not listed on [either] the Global Market or *is not a Covered Security* [another National Securities Exchange], the preferred stock and/or secondary class of common stock may continue to be listed on the Global Market so long as it satisfies the continued listing criteria for Primary Equity Securities set forth in Rule 5450.

* * * * *

5615. Exemptions From Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to controlled companies and sets forth the phase-in schedule afforded to Companies ceasing to be controlled companies.

- (a) No change.
 - (1) No change. IM-5615-1. No change.
 - (2) No change. IM-5615-2. No change.
 - (3) No change. IM-5615-3. No change.
 - (4) No change.
 - (5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the [requirements of] *Independent Directors requirement, the Independent Director Oversight of Executive Officer Compensation and Director Nominations requirements*, and the Code of Conduct [requirements] *requirement*, set forth in Rules 5605(b), (d) and (e), and 5610, respectively.

IM-5615-4. Management Investment Companies

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, Nasdaq exempts from [Rule] *Rules 5605(b), (d), (e)* and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

(b)-(c) No change.

IM-5615-5. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 12, 2009, Nasdaq filed a proposed rule change to revise the rules relating to the qualification, listing, and delisting of companies listed on, or applying to list on, Nasdaq to improve the organization of the rules, eliminate redundancies and simplify the rule

language.⁵ These new listing rules (the "Listing Rules") were effective April 13, 2009. Nasdaq has observed that the March filing introduced inadvertent changes in the Listing Rules related to the Global Market listing requirements for preferred stock and secondary classes of securities, and to the governance requirements applicable to management investment companies registered under the Investment Company Act of 1940.⁶ This filing modifies those rules to revert to the requirements as they previously existed in the listing rules (the "Old Rules"), and to make certain conforming changes.⁷

Nasdaq is proposing technical changes to conform Listing Rule 5415(b) and Listing Rules 5460(a) and (b) with the meaning of Old Rules 4420(k) and 4450(h), respectively, and to make them consistent with each other and the analogous Capital Market rules. Old Rules 4420(k) and 4450(h) provided quantitative initial and continued listing requirements for preferred stock and secondary classes of common stock. These rules also allowed the application of the respective initial and continued listing requirements applicable to common stock if the issuer's common stock or common stock equivalent security was not listed on either Nasdaq or another national securities exchange. In adopting Listing Rule 5415(a), Nasdaq replaced the term "national securities exchange" with the newly-defined term "Covered Security,"⁸ which was also used in the analogous Capital Market Listing Rules 5510 and 5555. Nasdaq did not, however, make conforming changes to Listing Rules 5415(b) and 5460 to replace the old term with the new. Further, in the case of Rule 5415(b), rule text inadvertently omits the word "not," which is necessary for the rule to retain its meaning. In the case of Rules 5460(a) and (b), the term "Covered Security" was not used at all. Accordingly, Nasdaq is proposing technical changes to Listing Rule 5415(b), and Listing Rules 5460(a) and (b) to make them consistent with each other and Rules 5610 and 5655, the analogous Capital Market rules.

⁵ Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR-NASDAQ-2009-018).

⁶ 15 U.S.C. 80-a1 [sic] *et seq.*

⁷ The text of Nasdaq's prior rules is included in Exhibit 5B of SR-NASDAQ-2009-018, *supra* note 5, available at: <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2009/SR-NASDAQ-2009-018.pdf>.

⁸ Listing Rule 5005(a)(9) defines a Covered Security as "a security described in Section 18(b) of the Securities Act of 1933."

Under Old Rule 4350(a)(2) and IM-4350-6, a management investment company registered under the Investment Company Act of 1940⁹ was exempt from Old Rule 4350(c), which contained the requirements for a company to have a majority independent board, hold executive sessions, and for independent directors to make certain compensation and nomination decisions, and Old Rule 4350(n), which contained the code of conduct requirement. Old Rule 4350(a)(2) was moved to Listing Rule 5615(a)(5) and exempts a registered management investment company from Listing Rule 5605(b), which contains the requirement for a company to have a majority independent board and executive sessions, and Listing Rule 5610, which contains the code of conduct requirement. However, the part of Old Rule 4350(c) which relates to the requirement for independent directors to make certain compensation and nomination decisions was moved to Listing Rules 5605(d) and (e), both of which are not cross-referenced in Listing Rule 5615(a)(5). As a consequence, Listing Rule 5615(a)(5) no longer contains the full range of exemptions that were previously provided under Old Rule 4350(a)(2). Accordingly, Nasdaq is proposing to amend the cross-reference found in Listing Rule 5615(a)(5) and IM-5615-4 to include Listing Rules 5605(d) and (e), thus conforming Listing Rule 5615(a)(5) with Old Rule 4350(a)(2). Nasdaq also proposes to expand the explanation of the cross references in the rule, consistent with the style of the Listing Rules.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general and with Sections 6(b)(5) of the Act,¹¹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to revert to the previously approved requirements of certain listing standards

that were inadvertently changed when adopting the new Listing Rules, and to complete certain conforming changes to the Listing Rules that were not fully implemented with their adoption.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)¹² of the Act and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASDAQ-2009-078 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21584 Filed 9-4-09; 8:45 am]

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⁹ 15 U.S.C. 80-a1 [sic] *et seq.*

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60595; File No. SR-NYSE-2009-91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rules 103B and 104 To Increase the Amount of Time That a Designated Market Maker Unit Must Maintain a Bid and an Offer at the National Best Bid and National Best Offer for an Aggregate Average Period of Time Monthly

August 31, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 31, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rules 103B and 104 to increase the amount of time that a Designated Market Maker unit must maintain a bid and an offer at the National Best Bid and National Best Offer for an aggregate average period of time monthly. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange market participants want a trading venue that encourages participants to add liquidity and facilitate their ability to trade larger orders more efficiently. The Exchange believes that essential to meeting the demands of its market participants and maintaining market quality is the availability of liquidity at the National Best Bid ("NBB") and National Best Offer ("NBO") (collectively herein "NBBO").⁴ The Exchange therefore proposes to amend NYSE Rules 103B and 104 to increase the amount of time that a Designated Market Makers ("DMM") unit must maintain a bid and an offer at the NBBO for an aggregate average period of time monthly.

Background

The NYSE implemented sweeping changes to its market rules and execution technology designed to improve execution quality on the Exchange.⁵ Among the elements of the enhanced Exchange market model, the NYSE eliminated the function of specialists on the Exchange creating a new category of market participant, the Designated Market Maker or DMM. The DMM, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest.

Moreover, the Exchange's market model was designed to encourage DMMs to add liquidity at the NBBO. Specifically, the Exchange implemented quoting requirements pursuant to Exchange Rules 103B ("Security Allocation and Reallocation") and 104 ("Dealings and Responsibilities of DMMs"). The quoting requirement pursuant to Rule 103B is the single

objective standard to determine DMM unit eligibility for participation in the allocation process. NYSE Rule 104 employs the same numerical standards as it relates to a DMM unit's affirmative obligations to maintain a continuous two-sided quote.

Under current Rules 103B and 104, for listed securities that have a consolidated average daily volume of less than one million shares per calendar month ("Less Active") a DMM unit must maintain a bid and an offer at the NBBO for an aggregate average monthly time of 10% or more during a calendar month. For listed securities that have a consolidated average daily volume equal to or greater than one million shares per calendar month ("More Active"), the DMM unit must maintain a bid and an offer at the NBBO for an aggregate average monthly time of 5% or more during a calendar month. DMM units are required to satisfy the quoting requirement for both categories of their assigned securities.⁶

Time at the NBBO is calculated as the average of the percentage of time the DMM unit has a bid or offer at the NBBO. For example, if a DMM unit maintains a quote at the National Best Bid for 6% of the trading day and a quote at the National Best Offer for 4% of the trading day, then the average of these times is 5%. The Exchange determines whether a DMM unit has met its quoting requirements on a month-by-month basis by calculating:

(1) The "Daily NBB Quoting Percentage" by determining the percentage of time a DMM unit has at least one round lot of displayed interest in an Exchange bid at the National Best Bid during each Trading Day for a calendar month;

(2) The "Daily NBO Quoting Percentage" by determining the percentage of time a DMM unit has at least one round lot of displayed interest in an Exchange offer at the

⁶ Under NYSE Rule 103B, if a DMM unit fails to satisfy the quoting requirements during a one-month period, the Exchange issues an initial warning letter to the DMM unit, advising it of its deficiency. The DMM unit must provide in writing an explanation and articulation of corrective action. If the DMM unit fails to meet the requirement for a second consecutive month, the DMM unit is ineligible to participate in the allocation process for a minimum of two months following the second consecutive month of its failure to meet its quoting requirement ("Penalty Period"). The DMM unit must satisfy the quoting requirement for the two consecutive months of the Penalty Period. In the event a DMM unit fails to satisfy its quoting requirements for the two consecutive months of the Penalty Period, the DMM unit will remain ineligible to participate in the allocation process until it has met the quoting requirement for a consecutive two calendar month period. Under NYSE Rule 104, failure to satisfy the quoting requirement is a violation of the DMM unit's affirmative obligation and may subject the DMM unit to regulatory action, including formal or informal discipline.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ In addition, through a separate filing the Exchange proposes to adjust DMM units' rebate payments to be based on (i) an increased amount of time that DMM units must maintain a bid and an offer at the NBBO on a stock by stock basis during a month; and (ii) a requirement that the DMM units be 25% of the quoted volume during the trading day on a stock by stock basis. See SR-NYSE-2009-90.

⁵ See Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR-NYSE-2008-46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009). The NYSE also recognized that in view of the NYSE's electronic execution functionality, the DMM, unlike the specialist, would no longer be deemed the agent for every incoming order. The NYSE also responded to customer demand to create additional undisplayed reserve interest.

National Best Offer during each Trading Day for a calendar month;

(3) The "Average Daily NBBO Quoting Percentage" for each Trading Day by summing the "Daily NBB Quoting Percentage" and the "Daily NBO Quoting Percentage" then dividing such sum by two;

(4) The "Monthly Average NBBO Quoting Percentage" for each security by summing the security's "Average Daily NBBO Quoting Percentages" for each Trading Day in a calendar month then dividing the resulting

sum by the total number of Trading Days in such calendar month; and

(5) For the total Less Active Securities (More Active Securities) assigned to a DMM unit, the Exchange will determine the "Aggregate Monthly Average NBBO Quoting Percentage" by summing the Monthly Average NBBO Quoting Percentages for each Less Active Security (More Active Security) assigned to a DMM unit, then dividing such sum by the total number of Less Active Securities (More Active Securities) assigned to such DMM unit.

Below is an example of a quoting requirement calculation. For purposes of this example, it is assumed that DMM Unit 1 has two assigned securities, A and B and that there were 5 trading days in the selected calendar month.

The Average Daily NBBO for DMM Unit 1 is calculated for each security by summing the daily NBB and NBO of each security for that day and dividing that number by two:

Trading days	NBB (percent)	NBO (percent)	Calculation average daily NBBO for DMM Unit 1	Average daily NBBO (percent)
Security A				
T1	4	6	4% + 6% = 10% divided by 2 = 5%	5
T2	3	5	3% + 5% = 8% divided by 2 = 4%	4
T3	4	4	4% + 4% = 8% divided by 2 = 4%	4
T4	6	8	6% + 8% = 14% divided by 2 = 7%	7
T5	5	5	5% + 5% = 10% divided by 2 = 5%	5
Security B				
T1	5	7	5% + 7% = 12% divided by 2 = 6%	6
T2	4	6	4% + 6% = 10% divided by 2 = 5%	5
T3	6	8	6% + 8% = 14% divided by 2 = 7%	7
T4	7	9	7% + 9% = 16% divided by 2 = 8%	8
T5	9	9	9% + 9% = 18% divided by 2 = 9%	9

The monthly average NBBO quoting percentage for DMM Unit 1 for each security is then calculated by summing

the security's average Daily NBBO Quoting Percentages for all the Trading Days of the calendar month and then

dividing the resulting total by the number of Trading Days in the calendar month (in this instance 5).

Average daily NBBO					Calculation monthly average NBBO for DMM Unit 1	Monthly average NBBO
T1	T2	T3	T4	T5		
Security A						
5%	4%	4%	7%	5%	5% + 4% + 4% + 7% + 5% = 25% divided by 5 = 5%	5%
Security B						
6%	5%	7%	8%	9%	6% + 5% + 7% + 8% + 9% = 35% divided by 5 = 7%	7%

The Aggregate Monthly Average NBBO Quoting Percentage for DMM Unit 1 is determined by summing the Monthly Average NBBO for each security and then dividing such sum by the total number of securities.

Aggregate Monthly Average for Specialist Unit 1

Monthly Average NBBO Security A + Monthly Average NBBO Security B divided by 2
 5% + 7% = 12% divided by 2 = 6%
 Aggregate Monthly Average

The Exchange reviews each DMM unit's trading, as illustrated in the example above, on a monthly basis to determine whether the DMM unit has satisfied its quoting requirement.⁷ In the

example above, assuming that Securities A and B were Less Active Securities, then the DMM Unit 1 would not have met that component of its quoting obligation for the month because the 6% aggregate monthly average is 4% less than the required 10% monthly average time at the NBBO for its Less Active Securities. If however, Securities A and B were More Active Securities, then DMM Unit 1 would have met that component of its quoting obligation for the month because the 6% aggregate monthly average is 1% higher than the 5% monthly average time at the NBBO for More Active Securities.

Proposed Amendment to NYSE Rules 103B and 104

The Exchange proposes to increase DMM units' quoting requirement for

both Less Active and More Active securities in both NYSE Rules 103B and 104. For Less Active securities the Exchange seeks to amend NYSE Rule 103B Section II(D) and NYSE Rule 104(a)(1)(A) to increase the current requirement that DMM units be 10% of the time at the NBBO to 15%. For More Active securities, the Exchange proposes to amend NYSE Rule 103B Section II(E) and NYSE Rule 104(a)(1)(A) to increase the current 5% of the time at the NBBO to 10%. Time at the NBBO will continue to be calculated on a month-by-month basis as the average of the percentage of time DMM units have a bid or offer at the NBBO.

As proposed, assuming again that DMM Unit 1 has two assigned securities, A and B and that there were

⁷ See NYSE Rule 103B, Section II(f)(4).

5 trading days in the selected calendar month, then DMM Unit 1 must increase its quoting such that for Less Active

Securities, it is 10% of the time at the NBBO and for More Active Securities it

is 15% of time at the NBBO as illustrated in the example below.

Trading days	NBB (percent)	NBO (percent)	Calculation average daily NBBO for DMM Unit 1	Average daily NBBO (percent)
Security A				
T1	8	12	8% + 12% = 20% divided by 2 = 10%	10
T2	6	10	6% + 10% = 16% divided by 2 = 8%	8
T3	8	8	8% + 8% = 16% divided by 2 = 8%	8
T4	12	16	12% + 16% = 28% divided by 2 = 14%	14
T5	10	10	10% + 10% = 20% divided by 2 = 10%	10
Security B				
T1	10	14	10% + 14% = 24% divided by 2 = 12%	12
T2	8	12	8% + 12% = 20% divided by 2 = 10%	10
T3	12	16	12% + 16% = 28% divided by 2 = 14%	14
T4	14	18	14% + 18% = 32% divided by 2 = 16%	16
T5	18	18	18% + 18% = 36% divided by 2 = 18%	18

The monthly average NBBO quoting percentage for DMM Unit 1 for each security is then calculated by summing

the security's average Daily NBBO Quoting Percentages for all the Trading Days of the calendar month and then

dividing the resulting total by the number of Trading Days in the calendar month (in this instance 5).

Average daily NBBO					Calculation monthly average NBBO for DMM Unit 1	Monthly average NBBO
T1	T2	T3	T4	T5		
Security A						
10%	8%	8%	14%	10%	10% + 8% + 8% + 14% + 10% = 50% divided by 5 = 10%.	10%
Security B						
12%	10%	14%	16%	18%	12% + 10% + 14% + 16% + 18% = 70% divided by 5 = 14%.	14%

The Aggregate Monthly Average NBBO Quoting Percentage for DMM Unit 1 is determined by summing the Monthly Average NBBO for each security and then dividing such sum by the total number of securities.

Aggregate Monthly Average for Specialist Unit 1

Monthly Average NBBO Security A + Monthly Average NBBO Security B divided by 2
 10% + 14% = 24% divided by 2 = 12% Aggregate Monthly Average

In the example above, assuming Securities A and B were Less Active Securities, then DMM Unit 1 would not have met that component of the proposed quoting obligation for the month because the 12% aggregate monthly average is 3% less than the required 15% monthly average time at the NBBO for its Less Active Securities. If, however, Securities A and B were More Active Securities, then the DMM Unit 1 would have met that component

of the proposed quoting obligation for that month because the 12% aggregate monthly average is 2% higher than the required 10% monthly average time at the NBBO for More Active Securities.

The Exchange will continue to review each DMM unit's trading on a monthly basis to determine whether the DMM unit has satisfied its quoting requirement for both Less Active and More Active Securities. The Exchange's current review of DMM units' trading on a monthly basis suggests that the proposed increase would not place an undue burden on DMM units. All DMM units currently exceed their quoting requirements on a monthly basis. Based on past performance, the Exchange anticipates that the changes proposed herein combined with the above referenced rebate changes will establish a new baseline for quoting by DMM units that will incentivize the DMM units to provide additional liquidity above the new proposed minimum standards. Accordingly, the Exchange

believes that the proposed quoting requirements increase is reasonable, since it is anticipated to improve market quality by increasing liquidity at the NBBO, without adversely impacting the DMM units' ability to meet their market making obligations.

Moreover, the Exchange believes that increasing the quoting requirements pursuant to both NYSE Rules 103B and 104 is consistent with the Exchange's commitment to providing its customers with a trading venue that has deep liquidity at the NBBO and transparency, the hallmark of a fair and efficient market.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")⁸ for these proposed rule changes is the requirement under Section 6(b)(5)⁹ that an Exchange have rules that are

⁸ 15 U.S.C. 78a.

⁹ 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change supports these principles in that it serves to increase the liquidity available at the NBBO. The Exchange believes that increased liquidity at the NBBO will lead to enhanced market quality which ultimately serves to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the

30-day operative delay¹⁴ is consistent with the protection of investors and the public interest because such waiver will permit the Exchange to immediately apply the new enhanced quoting requirements.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington,

DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSE-2009-91 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60606; File No. SR-Phlx-2009-76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to a Retroactive Waiver of the Cancellation Fee

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on August 27, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to retroactively waive the Cancellation Fee for the month of July 2009 and issue a rebate to member organizations for Cancellation Fees that were assessed in July 2009.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/>

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ *Id.*

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Filings/, 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rebate monies previously assessed for the Cancellation Fee in July 2009 to all member organizations. During the month of July 2009, member organizations were assessed \$2.10 per order for each cancelled electronically-delivered³ order in excess of the number of orders executed on the Exchange by a member organization in a given month.⁴ The Exchange calculates the Cancellation Fee by aggregating all orders and cancels received by the Exchange and totaling those orders by member organization. The Exchange aggregates and counts as one executed customer⁵ option order all customer orders from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period.⁶ The following order

activity is exempt from the Cancellation Fee: (i) Pre-market cancellations⁷ (ii) Complex Orders⁸ that are submitted electronically; (iii) unfilled Immediate-or-Cancel⁹ customer orders; and (iv) cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange.

The Exchange assessed the applicable Cancellation Fee of \$2.10 per order on member organizations, as specified above, during the month of July 2009. The Exchange believes that recent changes to the Cancellation Fee may have created confusion among its members as to the applicability of the fee and/or its calculation. The Exchange has explained the current fee applicability to its member organizations¹⁰ and as a result would propose to retroactively waive the Cancellation Fee for the month of July 2009 and issue a rebate to all member organizations for Cancellation fees assessed in July 2009. The Exchange believes that member organizations have been adequately educated as to the Exchange's current Cancellation Fee and its applicability for future assessments.

Simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of electronically-delivered orders. (A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number.) See Exchange Rule 1066(c)(7). Also, pre-market cancellations are not included in the calculation of the Cancellation Fee as well as Complex Orders that are submitted electronically. See Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR-Phlx-2005-92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR-Phlx-2006-21).

⁷ See Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR-Phlx-2005-92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR-Phlx-2006-21). See also Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR-Phlx-2009-44).

⁸ A Complex Order is composed of two or more option components and is priced as a single order (a "Complex Order Strategy") on a net debit or net credit basis.

⁹ An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

¹⁰ NASDAQ OMX PHLX staff contacted all member organizations who were assessed a Cancellation Fee in July 2009 concerning the applicability and calculation of this fee prior to August 1, 2009. Additionally, the Exchange produces a daily cancellation fee reconciliation report as a tool for member organizations to monitor their cancel volume and potential charges.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposal to retroactively waive the Cancellation Fee for the month of July 2009 and issue a rebate to all member organizations for fees previously assessed in July 2009 is fair and equitable in that the waiver will apply to all member organizations. The Exchange believes that it has educated its members as to the applicability of the current Cancellation Fee and any confusion has been remedied for future assessment of this fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and paragraph (f)(2) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

³ See Exchange Rule 1080.

⁴ See Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR-Phlx-2009-44) (assessing \$2.10 per order for each cancelled electronically-delivered order and limit the applicability of the Cancellation Fee to cancelled electronically delivered customer orders.)

⁵ See e.g. Exchange Rule 1080(b)(i)(A) which defines customer order as " * * * is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest."

⁶ See Securities Exchange Act Release No. 60188 (June 29, 2009), 74 FR 32986 (July 9, 2009) (SR-Phlx-2009-48) (aggregating options orders within a specified time period for the purpose of assessing the Cancellation Fee). At least 500 cancellations must be made in a given month by a member organization in order for a member organization to be assessed the Cancellation Fee. The Cancellation Fee is not assessed in a month in which fewer than 500 electronically-delivered orders are cancelled.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2009-76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-76. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2009-76 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60603; File No. SR-BX-2009-049]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct an Error in Rule 7018

September 1, 2009

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 17, 2009, NASDAQ OMX BX, Inc. ("BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing a proposed rule change to correct a typographical error in Rule 7018. The text of the proposed rule change is attached as Exhibit 5³ and is available at <http://nasdaqomxbx.cchwallstreet.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is submitting this filing to correct a typographical error in Rule 7018.⁴ In

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Exhibit 5 is attached to the filing, but is not attached to this Notice.

⁴ The Commission notes that, as with all filings submitted under Section 19(b)(3)(A) of the Act, the filing is effective on the date it was filed, in this case August 17, 2009.

SR-BX-2009-018,⁵ BX modified its pricing for execution of orders in securities listed on The NASDAQ Stock Market ("NASDAQ") and the New York Stock Exchange ("NYSE") by, among other things, replacing a charge to access liquidity of \$0.0014 per share executed with a credit of \$0.0006 per share executed. This change was accurately described in the "Purpose" section of BX's Form 19b-4 filing,⁶ in the Commission's notice of the filing on the SEC Web site⁷ and in the **Federal Register**,⁸ in widely disseminated announcements of the pricing change,⁹ and in the pricing schedule that appears on BX's market Web site.¹⁰ However, due to a typographical error, the credit incorrectly appeared as "\$0.006" in Exhibit 5 to the filing. Accordingly, BX is submitting this filing to correct the typographical error. BX has been billing members in accordance with the correct fee since the effective date of the change in April 2009, and accordingly believes that all of its members that trade on the NASDAQ OMX BX Equities System are cognizant of the correct fee.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Section 6(b)(5) of the Act,¹² in particular, in that it is designed to remove impediments to and perfect the mechanism of a fee [sic] and open market and a national market system. The proposed rule change corrects a typographical error in BX Rule 7018.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

⁵ Securities Exchange Act Release No. 59682 (April 1, 2009), 74 FR 16015 (April 8, 2009) (SR-BX-2009-018).

⁶ See <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/pdf/bx-filings/2009/SR-BX-2009-018.pdf>.

⁷ See <http://www.sec.gov/rules/sro/bx/2009/34-59682.pdf>.

⁸ See Securities Exchange Act Release No. 59682 (April 1, 2009), 74 FR 16015 (April 8, 2009) (SR-BX-2009-018).

⁹ See <http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2009-16>.

¹⁰ See http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹⁵ 17 CFR 200.30-3(a)(12).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(3) of Rule 19b-4 thereunder.¹⁴ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BX-2009-049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-BX-2009-049 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21667 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60611; File No. SR-NASDAQ-2009-077]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Procedures Followed When a Listed Company Falls Below Certain Listing Requirements

September 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 1919b-4 thereunder,² notice is hereby given that on August 17, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to modify the procedures followed when a listed company falls below certain listing

requirements. Nasdaq will implement the proposed rule upon approval.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.³

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1)-(4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a)-(b) No change.

IM-5810-1. No change.

(c) Types of Deficiencies and Notifications.

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review.

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (iv) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iii) below must be provided generally within [15] 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (iv) must be provided generally within 60 calendar days.

(i)-(iv) No change.

IM-5810-2. No change.

¹³ 15 U.S.C. 78s(b)(3)(a)(iii).

¹⁴ 17 CFR 240.19b-4(f)(3).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.1919b-4.

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomx.cchwallstreet.com>.

(B) Staff Alternatives Upon Review of Plan Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies, *which are governed by Rule 5810(c)(2)(F) below*, upon review of a plan of compliance, Staff may either:

(i) Grant an extension of time to regain compliance not greater than [105] 180 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;

(ii)–(iii) No change.

(C) Timeline for Submission of Compliance Plans

Except for deficiencies from the standards of Rule 5250(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has [15] 45 calendar days to submit a plan to regain compliance with Nasdaq's listing standard(s). [Within the restrictions of paragraph (B),] Staff may extend this deadline *for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.* and upon receipt of the Company's plan, may request additional information from the Company to help it determine the Company's ability to regain compliance.]

(D)–(F) No change.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A)–(E) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A)–(B) No change.

(C) Market Value of Listed Securities [(MVLS)]

A failure to meet the continued listing requirements for [MVLS] *Market Value of Listed Securities* shall be determined to exist only if the deficiency continues for a period of [10] 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of [90] 180 calendar

days from such notification to achieve compliance [with the applicable continued listing standard]. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [90] 180 day compliance period.

(D) Market Value of Publicly Held Shares [(MVPHS)]

A failure to meet the continued listing requirement for Market Value of Publicly Held Shares shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of [90] 180 calendar days from such notification to achieve compliance. [Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the [90] 180 day compliance period.

(E)–(F) No change.

(4) No change.

(d) No change.

* * * * *

5840. Adjudicatory Process: General Information

(a)–(d) No change.

(e) Computation and Adjustment of Time

(1) No change.

(2) When Staff determines whether a deficiency has occurred with respect to [bid price, market value of listed securities] *the Bid Price, Market Value of Listed Securities* or [market value of publicly held shares] *Market Value of Publicly Held Shares requirements*, the first trading day that the [bid price or market value] *Bid Price or Market Value* is below required standards is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the [bid price, MVLS or MVPHS] *Bid Price, Market Value of Listed Securities, or Market Value of Publicly Held Shares requirements*, the first trading day that the [bid price or market value] *Bid Price or Market Value* is at or above required standards is included in computing the total number of consecutive trading days.

(3)–(4) No change.

(f)–(k) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify certain of the listing rules that provide the compliance periods associated with Nasdaq's continued listing rules to make them more consistent and, in some cases, to provide additional time to companies to regain compliance. In addition, Nasdaq is proposing to modify the time available to a company to provide a plan to regain compliance with certain listing requirements and the length of the extension that Nasdaq staff can allow a company to regain compliance.⁴

Price Related Criteria

Under Nasdaq rules, if a company's security has a closing bid price below \$1 for 30 consecutive trading days, it no longer meets the bid price requirement and is automatically provided 180 calendar days to regain compliance.⁵ However, under other requirements that are derived, in part, from the company's price, the company may be found non-compliant based on fewer days below the applicable threshold or have less time to regain compliance. Specifically, under the current rules related to market value of listed securities, a company is non-compliant after being below the standard for 10 consecutive trading days and, thereafter, is provided only 90 calendar days to regain compliance.⁶ Similarly, while the rules for market value of publicly held shares provide that a company is not deficient until it is below the standard for 30 consecutive trading days, the company is only provided with 90 calendar days to regain compliance.⁷ Because

⁴ Nasdaq is also proposing to eliminate certain abbreviations that are used inconsistently and utilize defined terms, as appropriate, in Rules 5810 and 5840, and to remove authority in Rule 5810(c)(2)(C) that is duplicated in Rule 5810(c)(2)(B).

⁵ Rule 5810(b)(3)(A).

⁶ Rule 5810(b)(3)(C). NASDAQ recently changed the period to regain compliance with the market value of listed securities requirement from 30 to 90 days. Securities Exchange Act Release No. 59291 (January 23, 2009), 74 FR 5197 (January 29, 2009) (SR-NASDAQ-2009-002).

⁷ Rule 5810(b)(3)(D).

compliance with each of these rules is directly related to the price of an issuer's security, Nasdaq believes that the length of time to trigger non-compliance, and the amount of time afforded as a compliance period, should be consistent with each other and with the periods applicable under the bid price rules. Therefore Nasdaq proposes to extend the period that a company would need to be below the minimum market value of listed securities requirement before being considered non-compliant from 10 to 30 consecutive trading days. In addition to providing consistency among the price-related tests, Nasdaq believes that this longer period will prevent a short-term market-wide decline from causing a company to become non-compliant. Nasdaq also proposes to extend from 90 to 180 days the compliance period in which companies that are non-compliant with the market value of listed securities and market value of publicly held shares requirements can regain compliance.⁸ Nasdaq believes that the existing 90-day time frames do not provide sufficient time for a company to regain compliance. For example, if a company chooses to issue additional shares to evidence compliance, 90 calendar days is often an insufficient time to allow a company to obtain any necessary shareholder approval, register the shares, and demonstrate compliance for 10 business days.

As revised, the maximum amount of time that could be afforded to a company that failed to meet the market value of listed securities or market value of publicly held shares requirements would be 18 months. A company could only receive an extension up to this 18-month maximum length if: (i) It failed to comply during the automatic 180-day compliance period;⁹ (ii) the company appealed to a Hearings Panel;¹⁰ and (iii) the Nasdaq Listing and Hearing Review Council determined to call the matter for review, stay the company's

⁸ Nasdaq could apply its authority described in Rule 5100 to delist a security during a compliance period if the market value of listed securities or market value of publicly held shares was so low that delisting is necessary to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

⁹ Proposed Rules 5810(c)(3)(C) and 5810(c)(3)(D).

¹⁰ An appeal to the Hearings Panel stays the securities delisting. Rule 5815(a)(1). The company can submit a plan to regain compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period. Rule 5815(a)(5). Based on its review of that plan, the Hearings Panel can grant the company a maximum of 180 days from the date of the staff's delisting determination to regain compliance. Rule 5815(c)(1)(A).

delisting,¹¹ and, after reviewing the company's compliance plan,¹² provide the company with the maximum 360-day period from the date of the Staff Delisting Determination to regain compliance.¹³

Requirements with Respect to Compliance Plans

Nasdaq also proposes to modify the periods applicable in cases where a company can provide staff with a plan to regain compliance, such as when a company fails to meet the minimum requirements for stockholders' equity, the number of publicly held shares, or the number of shareholders.¹⁴ Currently, companies are provided 15 calendar days to submit a plan to regain compliance and, following a review of the plan, staff can grant the company a period of up to 105 calendar days from the initial notification of non-compliance for the company to regain compliance. Nasdaq's experience has been that 15 days is often insufficient for a company to formulate a meaningful plan, especially given current market and economic conditions, and accordingly proposes to increase from 15 to 45 the number of calendar days a company has to present its plan. Staff would be permitted to grant up to a 5-day extension of this period upon good cause shown.¹⁵ Further, Nasdaq proposes to increase from 105 to 180 the number of calendar days for which staff can grant an extension of time from its initial notification of non-compliance.¹⁶ Nasdaq believes that this additional

¹¹ Rule 5820(a) provides that an appeal to the Nasdaq Listing and Hearings Review Council does not operate to stay a Hearings Panel's decision to delist a company. In order for a Panel decision to be stayed, the Listing Council must call the matter for review pursuant to Rule 5820(b) and affirmatively determine to stay the Panel's decision.

¹² When the Listing Council calls a matter for review it provides the company with a deadline to submit a written submission. Rule 5820(b). The Listing Council's review is based on the written record, including that submission. Rule 5820(e)(1).

¹³ Rule 5820(d)(1).

¹⁴ Rule 5810(c)(2) and IM-5810-2 provide the procedures governing deficiencies for which a company may submit a plan of compliance to Nasdaq staff. Nasdaq has posted frequently asked questions at <http://www.nasdaq.com/about/faqs-listing-information-questions.stm#continued>, which discuss the information a company should consider in preparing its plan of compliance.

¹⁵ It is anticipated that this authority would be used to address cases where the company could not timely submit its plan due to events outside the control of the company, such as when severe weather interferes with the company's ability to provide the necessary information before the deadline.

¹⁶ Nasdaq staff will determine whether to allow the company additional time, and if so how much time to allow, based on a review of the company's plan of compliance.

time will better allow companies to implement a plan to regain compliance.

As revised, the maximum amount of time that could be afforded to a company that failed to meet a listing requirement that allows the submission of a plan to regain compliance would be 18 months. A company could only receive an extension up to this 18-month maximum length if: (i) After reviewing the company's compliance plan, Nasdaq staff granted the company the maximum 180-day period to regain compliance;¹⁷ (ii) the company failed to comply within the time allowed by staff and appealed to a Hearings Panel;¹⁸ and (iii) the Nasdaq Listing and Hearing Review Council determined to call the matter for review, stay the company's delisting, and, after reviewing the company's compliance plan, provide the company with the maximum 360-day period from the date of the Staff Delisting Determination to regain compliance.¹⁹

Implementation

Any company that had not yet been notified that it was non-compliant with the market value of listed securities requirement upon Commission approval of the proposed rule change would not be notified until they were below the requirement for 30 consecutive trading days.²⁰ Any company that had already been notified that it was non-compliant with either the market value of listed securities requirement or the market value of publicly held shares requirement and that was still in the 90 calendar day compliance period for such failure would have their compliance period extended until 180 calendar days from the date they were originally notified of the deficiency.²¹ No additional time would be provided to a company that has received a Staff Delisting Determination for failure to

¹⁷ Proposed Rule 5810(c)(2)(B)(i).

¹⁸ See footnote 10, *supra*.

¹⁹ See footnotes 11-13, *supra*.

²⁰ For example, if a security is below the market value of listed securities requirement for 7 consecutive trading days when the proposed rule is approved, the company would not be notified that it is deficient unless and until the security remains below the requirement for another 23 consecutive trading days, such that it remained below for a total of 30 consecutive trading days.

²¹ For example, if a company had been notified that its security was below either the market value of listed securities or market value of publicly held shares requirement 30 days before the proposed rule is approved, such that it had 60 days remaining in its compliance period, that compliance period would be extended by 90 days so that the company would have 150 days remaining in the compliance period.

meet either of those requirements before the proposed rule change is approved.²²

With respect to the proposed changes to the compliance plan process, if a company has not yet submitted its plan of compliance when the proposed rule change is approved, the deadline to submit that plan would be extended until 45 days from the date of staff's notification of the deficiency. If the company had submitted its plan of compliance when the proposed rule change is approved, but staff has not yet made a determination with respect to whether to grant additional time, staff would be permitted to grant the company up to 180 days from staff's notification of the deficiency to regain compliance. If the company has already received an extension of time to regain compliance from staff when the proposed rule change is approved,²³ at the end of that exception staff could, based on a review of the company at the time, grant additional time for the company to regain compliance, up to 180 days from staff's original notification of the deficiency.²⁴ No additional time would be provided to a company that had already received a Staff Delisting Determination at the time the proposed rule change is approved.²⁵

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁶ in general and with Sections 6(b)(5) of the Act,²⁷ in particular, which requires, among other things, that a national securities exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these

²² For example, if a company had been notified that its security was below either the market value of listed securities or market value of publicly held shares requirement 95 days before the proposed rule is approved, the company would not receive any additional time as a result of the proposed rule change. Such companies would continue through the Hearings and Appeals process, however, and could receive additional time as provided for in Rules 5815(c)(1)(A) and 5820(d)(1).

²³ Rule 5810(c)(2)(B)(i).

²⁴ The proposal to allow a company additional time at the end of its extension based on staff's further review of the company is consistent with Nasdaq's current practice of potentially allowing a company additional time if it was not initially granted the full 105 days allowed by current Rule 5810(c)(2)(B)(i).

²⁵ Such companies would continue through the Hearings and Appeals process, however, and could receive additional time as provided for in Rules 5815(c)(1)(A) and 5820(d)(1).

²⁶ 15 U.S.C. 78f.

²⁷ 15 U.S.C. 78f(b)(5).

requirements in that it would enhance consistency within Nasdaq's rules and between Nasdaq and other markets, thereby reducing investor confusion and facilitating capital formation, while permitting reasonable periods of time for companies to address instances of non-compliance with Nasdaq rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2009-077. This

file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NASDAQ-2009-077 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21644 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60609; File No. SR-BX-2009-056]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the Liquidity Make or Take Pricing Structure on BOX, as described in Sections 7(a) and 7(b) of the current BOX Fee Schedule. The Liquidity Make or Take Pricing Structure, and its respective charges and credits, currently applies to most classes listed for trading on BOX that are included in the Penny Pilot Program, as referenced in Chapter V, Section 33 of the BOX Rules ("Penny Pilot Classes").⁵

As proposed, the Liquidity Make or Take Pricing Structure will no longer apply and instead 'standard' execution fees will be applied to executions in all Penny Pilot Classes, except with regard to inbound P and P/A Order executions.⁶ The Exchange believes that this proposed fee change will align its pricing so as to better compete with other exchanges for executions in Penny Pilot Classes.

The Exchange is proposing that these changes become effective on September 1, 2009. In conjunction with this proposal, the Exchange proposes to issue a Regulatory Circular notifying BOX Options Participants of the impending change to pricing for executions on the BOX Market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(4) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, this proposed fee change will apply to all member order types and amend pricing for executions on BOX so as to better compete with the current pricing in place on other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

structure: (1) Standard & Poor's Depository Receipts® (SPY); (2) Powershares® QQQ Trust Series 1 (QQQQ); and (3) iShares Russell 2000® Index Fund (IWM). See Securities Exchange Act Release No. 60221 (July 1, 2009), 74 FR 32996 (July 9, 2009) (SR-BX-2009-033). These three classes will remain subject only to 'standard' fees.

⁶ Terms not otherwise defined herein shall have the meaning proscribed in the Options Order Protection and Locked/Crossed Market Plan or the BOX Rules, respectively.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(ii) of the Exchange Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-056. 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 will also be

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A recent proposal submitted by the Exchange for immediately [sic] effectiveness removed the following three (3) exchange-traded fund share classes from the Liquidity Make or Take pricing

available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BX-2009-056 and should be submitted on or before September 29, 2009.¹¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21643 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60604; File No. SR-NYSEArca-2009-78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Eliminating NYSE Arca Equities Rule 7.26, Adding New NYSE Arca Equities Rule 6.7 and Amending NYSE Arca Equities Rule 6.18

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 25, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (i) eliminate the requirement of NYSE Arca Equities Rule 7.26 that Market Makers establish and maintain certain specifically prescribed information barriers, (ii) add new NYSE Arca Equities Rule 6.7 regarding trading ahead of research reports, and (iii) revising NYSE Arca Equities Rule 6.18

to incorporate compliance with NASD Rule 3010. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III 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 Exchange proposes to eliminate the requirement set forth in NYSE Arca Equities Rule 7.26 that Market Makers on the Corporation maintain certain specifically prescribed information barrier procedures. At the same time, the Exchange further proposes new NYSE Arca Equities Rule 6.7, which (i) prohibits ETP Holders from trading ahead of research reports and (ii) requires each ETP Holder to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel. Finally, the Exchange proposes to revise NYSE Arca Equities Rule 6.18 to incorporate compliance with NASD Rule 3010.

All Members Must Maintain Policies Concerning the Misuse of Material Non-Public Information

Presently, NYSE Arca requires that each ETP Holder³ establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the ETP Holder or persons associated with the ETP Holder.⁴ For purposes of this requirement, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

(a) trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or

(b) trading in a security or related options or other derivative securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; or

(c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

The Exchange also has several rules prohibiting ETP Holders from disadvantaging their customers or other market participants by improperly capitalizing on the ETP Holders’ access to or receipt of material, non-public information. For example, NYSE Arca Equities Rule 6.16 prohibits an ETP Holder from trading ahead of its customer’s limit order.⁵ In addition, the Exchange prohibits the practice of “front-running” block transactions.⁶

Members Retain Responsibility for Compliance

In this context, by prohibiting the misuse of material, non-public information, the Exchange has appropriately defined the behavior that its participants must avoid. In the Exchange’s view, prescribing the form that these policies and procedures must take is unnecessarily burdensome. By defining certain prohibited behavior (e.g., Rules 6.3, 6.16, and 6.6) the Exchange has placed its participants on notice as to their specific compliance

⁵ See NYSE Arca Equities Rule 6.16: “No ETP Holder may accept and hold an unexecuted limit order from its customer * * * and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer’s limit order without executing that limit order.”

⁶ See NYSE Arca Equities Rule 6.6: “An ETP Holder or associated person obtaining information of an immediate pending transaction or a transaction executed but not yet reported on any national securities exchange or association involving 5,000 shares or more of a security including an equivalent number of option contracts admitted to dealings on the NYSE Arca, Inc., or securities underlying the options so admitted, shall not initiate or transmit an order in the security involved, or options relating to that security, through the facilities of the Corporation for any account in which he or she or his or her organization are participants until after the transaction appears on the ticker or is otherwise disclosed, in the case of orders pertaining to equities, or until two minutes after such disclosure, in the case of orders pertaining to options. Exceptions will require prior approval from the Corporation.”

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Arca Equities Rule 1.1(n).

⁴ See NYSE Arca Equities Rule 6.3.

burdens with respect to preventing the misuse of material, non-public information. Further, NYSE Arca Equities Rule 6.18 requires each ETP Holder to (i) establish and maintain a system to supervise the activities of its associated persons and (ii) establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the NYSE Arca Equities Rules.

The Exchange, therefore, proposes to eliminate, in their entirety, the requirements set forth in NYSE Arca Equities Rule 7.26 that Market Makers on the Corporation maintain certain specifically prescribed information barrier procedures. This proposal is consistent with the approach currently employed by the Nasdaq Stock Market, L.L.C. (“Nasdaq”), which does not generally require its members to establish or maintain information barriers.

Comparison to Nasdaq’s Framework

By amending its rules in accordance with this proposal, the Exchange reinforces a regulatory structure that clearly identifies prohibited conduct (e.g., misuse of material, non-public information) without further requiring Market Makers to establish and maintain specific compliance mechanisms (e.g., information barriers). For example, Nasdaq prohibits the misuse of material, non-public information but does not generally require that its members establish and maintain information barriers.⁷ Similar to NYSE Arca Equities Rule 6.18, however, Nasdaq Rule 3010 requires its members to establish and maintain a system to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with applicable Nasdaq Rules. Nasdaq Rule 3010 further incorporates by reference NASD Rule 3010, requiring compliance with that rule as if it were part of Nasdaq’s rules.⁸

⁷ See Nasdaq Rules 2110–2, 2110–3, and 2110–4.

⁸ In Regulatory Notice 07–59, FINRA recognized that policies and procedures may differ among entities depending on their business model (e.g., size, structure, customer base and product mix). In this context, it is important to note the need for flexibility and fluidity—should an entity’s business model change or expand, it may also be appropriate to revise its supervisory policies and procedures so as to better reflect its new business model. Further, although NASD Rule 3010 does not specifically require firms to establish specific information barriers, NTM 07–59 identifies information barrier procedures as a relevant process by which to manage conflicts of interest or to prevent

The Exchange believes that the approach proposed herein is consistent with Nasdaq’s structure. First, NYSE Arca has similar requirements concerning the maintenance of a supervisory system and written supervisory procedures. The Exchange’s rules governing supervision are similar to Nasdaq’s rules (which in-turn incorporate compliance with NASD Rule 3010). The Exchange notes that FINRA and NYSE Arca have previously acknowledged, pursuant to the provisions of Rule 17d–2 under the Securities Exchange Act of 1934 (“17d–2 Agreement”), that, collectively, NYSE Arca Equities Rules 6.18, 9.1(c), 9.1(d), and 9.2(b) are substantially similar to NASD Rule 3010. In this context, the Exchange proposes to amend NYSE Arca Equities Rule 6.18 in order to clarify that the Exchange construes the Supervisory System and Written Procedures requirements of this rule in a manner consistent with the similar requirements of NASD Rule 3010. Accordingly, the Exchange proposes adding the following (in addition to certain definitional references) as Commentary .01:

“ETP Holders shall comply with NASD Rule 3010(a)(1), (b)(1), and (c)(1) as if such rule were part of NYSE Arca’s Rules.”

The Exchange further proposes adding new NYSE Arca Equities Rule 6.7, prohibiting ETP Holders from establishing, increasing, decreasing or liquidating an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security. Similar to FINRA Rule 5280, NYSE Arca hereby proposes to require that ETP Holders must establish, maintain and enforce procedures reasonably designed to restrict or limit the information flow between research department personnel and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report.⁹

Second, like Nasdaq, market makers and Lead Market Makers on NYSE Arca do not have any advantages regarding relevant trading information provided by the Exchange, either at, or prior to, the point of execution vis-à-vis other market participants. The Exchange notes that NYSE Arca ETP Holders, Market Makers, and Lead Market Makers have equal access to the relevant trading

communications of material non-public information between certain individuals or groups.

⁹ The Exchange understands that Nasdaq will similarly amend its rules regarding trading ahead of research reports to reflect this requirement.

information coming from or provided by the Exchange. Accordingly, it is appropriate for the Exchange to establish the same approach with respect to information barriers as employed by Nasdaq.¹⁰

Conclusion: Flexibility and Accountability

Eliminating NYSE Arca Equities Rule 7.26, adding NYSE Arca Equities Rule 6.7 and clarifying NYSE Arca Equities Rule 6.18, as proposed herein, offers Exchange participants both certainty and flexibility. NYSE Arca participants are on notice as to their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information. Like Nasdaq, NYSE Arca participants will now be afforded the same flexibility to maintain compliance mechanisms of their own design. The Exchange believes that this approach fosters a fair and orderly marketplace without being overly burdensome upon its members.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹¹ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Eliminating NYSE Arca Equities Rule 7.26, while establishing new NYSE Arca Equities Rule 6.7 and revising NYSE Arca Equities Rule 6.18, should eliminate unnecessary regulatory burdens while at the same time retaining an appropriate mechanism designed to ensure that material, non-public information continues to be protected.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁰ NYSE Arca notes that its current examination procedure regarding its review for appropriate supervisory systems and procedures will remain in place.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-78. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File

Number SR-NYSEArca-2009-78 and should be submitted on or before September 29, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ The Commission believes that the proposal is consistent with Section 6(b)(5)¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange is proposing to eliminate NYSE Arca Equities Rule 7.26 and the specifically prescribed information barriers described therein, and to adopt a more principles-based approach that would permit a Market Maker to develop and apply its own policies and procedures to, among other things, prohibit the misuse of material nonpublic information. NYSE Arca Equities Rule 7.26 addresses concerns arising from the potential for the sharing of material non-public information between a Market Maker's market making activities and Other Business Activities of the Market Maker or its affiliates.¹⁵ For instance, one such concern is that the Market Maker or affiliate engaging in Other Business Activities might use non-public information that was acquired by the Market Maker through its role as a market maker, such as trading based on information on the Market Maker's book. Another concern is that the Market Maker might use material non-public information received from the entity engaging in Other Business Activities, such as trading based on a

¹³ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Other Business Activities include conducting an investment banking or public securities business, making markets in the options overlying the security in which the Market Maker makes markets, and, subject to certain specified exceptions, functioning as a General Authorized Trader. See NYSE Arca Equities Rule 7.26.

change in the firm's buy or sell recommendation.¹⁶

While the proposed rules will no longer specify policies and procedures a Market Maker must establish, the proposal will require that the policies and procedures be reasonably designed to ensure compliance with applicable federal securities law and regulations, and with Exchange rules. The Commission believes that, with adequate oversight by the Exchange of its members, elimination of prescriptive information barrier requirements should not reduce the effectiveness of NYSE Arca rules requiring ETP Holders to establish and maintain systems to supervise the activities of ETP Holders, and written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on misuse of material nonpublic information.

Specifically, NYSE Arca Equities Rule 6.3, which requires ETP Holders¹⁷ to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material non-public information by the ETP Holder or persons associated with the ETP Holder, will continue to apply. The misuse of material non-public information includes trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities.¹⁸ The Exchange also proposes to add NYSE Arca Equities Rule 6.7, which will prohibit an ETP Holder from establishing, increasing, decreasing or liquidating an inventory position in a security or derivative of that security based on advance non-public knowledge of the content or timing of a research report concerning that security. Further, NYSE Arca Equities Rule 6.18, which sets forth an ETP Holder's responsibilities or obligations related to conduct or supervision, will continue to apply and will be strengthened and clarified by explicitly requiring ETP Holders to comply with NASD Rule 3010(a)(1), (b)(1), and (c)(1) as if such rules were part of NYSE Arca's Rules. As incorporated by the Exchange, NASD

¹⁶ See Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR-NYSE-2008-45) (articulating concerns in the context of approving changes to NYSE Rule 98).

¹⁷ Market Makers are a type of ETP Holder. See NYSE Arca Equities Rule 7.20. The Commission believes that the information-sharing concerns regarding Market Makers applies equally to ETP Holders.

¹⁸ See NYSE Arca Equities Rule 6.3, Commentary .01.

Rule 3010(a)(1), (b)(1), and (c)(1) provide additional clarification that the supervisory systems and internal inspections of ETP Holders must be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NYSE Arca rules, including those relating to the misuse of material non-public information.

Pursuant to this proposal rule change, ETP Holders may utilize the flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. An ETP Holder should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, the Commission notes that, while information barriers are not specifically required under the proposal, an ETP Holder's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Commission believes that the regulatory approach in this proposed rule change is substantially similar to the regulatory approach of Nasdaq. In particular, the NYSE Arca approach, like the Nasdaq approach, (i) enumerates the conduct that is prohibited by its members, including the potential misuse of material non-public information and (ii) provides for the policies and procedures that must be reasonably designed to ensure compliance with the same. In addition, the Commission notes that the Exchange has represented that its current examination procedure for the review of appropriate supervisory systems and procedures will remain in place.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁹ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Although this proposed rule change does not require that members maintain specifically-prescribed information barriers, it will continue to mandate that members establish and maintain a set of policies and procedures reasonably designed to

achieve compliance with applicable securities law and regulations, and with applicable Exchange rules. As such, the Exchange is adopting an approach that is substantially similar to the approach currently employed by Nasdaq.²⁰

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NYSEArca-2009-78) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21641 Filed 9-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60607; File No. SR-NYSEArca-2009-80]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Risk Management Gateway ("RMG") Service

September 1, 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 28, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish its Risk Management Gateway ("RMG") service. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

²⁰ See Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (January 23, 2006) (adopting Nasdaq IM-2110-2; IM-2110-3; IM-2110-4, and Rule 3010).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to offer, through its wholly-owned subsidiary NYSE Euronext Advanced Trading Solutions, Inc., the Risk Management Gateway ("RMG") service as a facility³ of the Exchange, to NYSE Arca Users,⁴ NYSE Transact Tools, Inc, a division of the NYSE Euronext Advanced Trading Solutions Group ("NYXATS"), owns RMG.

Traditionally, the customers of an ETP Holder gave orders to the ETP Holder who then submitted those orders to the Exchange on behalf of the customer. By means of sponsored access, an ETP Holder may allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the Sponsoring ETP Holder acting as an intermediary.⁵

To facilitate the ability of Sponsoring ETP Holders to monitor and oversee the sponsored access activity of their Sponsored Participants, NYXATS will offer an order-verification service to Sponsoring ETP Holders. This service will act as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange's trading systems for execution. When a Sponsored Participant's order passes through RMG,

³ The term "facility" as defined in Section 3(a)(2) of the Act, as amended, provides, when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any rights to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. See 15 U.S.C. 78c(a)(2).

⁴ See NYSE Arca Equities Rule 1.1(yy).

⁵ See NYSE Arca Equities Rule 7.29(b).

¹⁹ 15 U.S.C. 78s(b)(2).

RMG software determines whether the order complies with order criteria that the ETP Holder has established for that Sponsored Participant. The order criteria pertain to such matters as the size of the order (per order or daily quantity limits) or the credit limit (per order or daily value) that the Sponsoring ETP Holder has established for the Sponsored Participant. Additional risk filters may also be selected by the Sponsoring ETP Holder's relating to specific symbols or end users.

If the order is consistent with the parameters set by the ETP Holder, then RMG allows the order to continue along its path to the Exchange's trading systems. If the order falls outside of those parameters, then RMG returns the order to the Sponsored Participant. RMG will only return an order to the Sponsored Participant when the order fails to comply with the criteria set by the Sponsoring ETP Holder.

RMG software interacts with orders only prior to the orders' entry into the Exchange's trading system for execution. RMG does not have order execution or trade reporting capabilities (though it will allow a Sponsoring ETP Holder to monitor the orders of its Sponsored Participants). RMG maintains a record of all messages relating to Sponsored Participants' transactions and supplies a copy of such messages to the applicable Sponsoring ETP Holder.

The Sponsoring ETP Holder, and not RMG, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of RMG by an ETP Holder does not automatically constitute compliance with Exchange rules.

NYXATS will host RMG software on NYXATS' infrastructure. After passing through RMG software, each order will enter the NYSE Arca's Gateway.

The Exchange does not require Sponsoring ETP Holders to use RMG. Sponsoring ETP Holders are free to use a competing risk-management service or to use none at all. The Exchange will not provide preferential treatment to Sponsoring ETP Holders using RMG.

The Exchange proposes to make RMG available to its Users, as a facility of the Exchange, pursuant to contractual arrangements.⁶ The Exchange believes that RMG will offer its Users another option in the efficient risk management of its Sponsored Participant's access to NYSE Arca.

⁶ The Exchange will file with the Commission all fees associated with the RMG Service.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. This service will allow firms to better monitor the order flow of their Sponsored Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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.¹¹ However, Rule 19b-

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has complied with this requirement.

4(f)(6)(iii)¹² 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 and designate the proposed rule change operative upon filing so that the expected benefits to Exchange Users from use of the risk-management service would not be delayed. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that other self-regulatory organizations have similar functionality¹³ and that this filing raises no new regulatory issues. Therefore, the Commission designates the proposal operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-80 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-80. 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

¹² *Id.*

¹³ See Securities Exchange Act Release Nos. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR-NYSE-2008-101); 60236 (July 2, 2009), 74 FR 34068 (July 14, 2009) (SR-BATS-2009-019).

¹⁴ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2009-80 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21640 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60605; File No. SR-CHX-2009-13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Additional Trading Sessions

September 1, 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 28, 2009, Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. 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

CHX proposes to amend its rules to create an early trading session beginning at 6 a.m. CT on days the Exchange is open for trading and to create a second Late Trading Session from 3 p.m. to 3:15 p.m. CT. The text of this proposed rule change is available on the Exchange's Web site at (<http://www.chx.com>) and in 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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The CHX 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 Exchange is proposing to create an early trading session beginning at 6 a.m. CT on days the Exchange is open for trading and to create a second Late Trading Session from 3 p.m. to 3:15 p.m. CT. We believe that CHX Participants may be interested in posting bids and offers on the CHX in an early trading session, as well as in a late session immediately after the close of the Regular Session. In order to facilitate additional trading activity, the Exchange proposes to create an early trading session and a second late trading session, both of which would operate under the same basic operational and regulatory framework as the Regular Trading Session. CHX Participants could enter orders to buy and sell eligible securities and those orders would either be executed or displayed (or entered without being displayed in the case of a reserve or undisplayed order) depending on the status of our book and the national market system. The rules applicable to the Regular Trading Session would govern the Early and Late Trading Sessions, with the exception that the Regulation NMS

prohibitions regarding intermarket trade-throughs and locked and crossed markets would not be in force. The current Late Trading Session (which would be renamed the "Late Crossing Session") would be available from 3:15 p.m. to 4 p.m. CT and would be available only to Participants seeking to execute cross orders.

In furtherance of this initiative, the Exchange proposes to add or amend the a [sic] number of applicable CHX rules. Definitions setting the times of the respective trading sessions would be added to Article 1. Due to the risk of illiquidity, the Exchange does not believe that it is appropriate to execute IOC Market Orders during any of the Extended Hours trading sessions and we propose to restrict use of that order type to the Regular Trading Session. We propose to add a new rule to the Article 8 business conduct rules mandating that Participants which allow customers to trade in extended hours trading sessions to make certain specific risk disclosures relating to such activity. These risk disclosures are modeled on the rules of the BATS Exchange, Inc. regarding extended hours trading.³ The provisions of Article 20, Rule 1 setting the time of the various trading sessions would be amended to make reference to the Early, Late Trading and Late Crossing sessions and define how trading operates during those sessions. The language in Rule 1 referring to the hours of trading for specified exchange-traded funds would be deleted since those securities would be eligible for trading during the Early and Late Trading session, rendering the current text unnecessary. Finally, we would amend Article 20, Rule 8 to reflect the manner in which the various sessions are opened and closed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,⁴ and furthers the objectives of Section 6(b)(5) in particular,⁵ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. In this case, the expansion of trading hours through the creation of an Early Trading Session and an additional Late Trading Session would provide participants with

³ BATS Exchange Rule 3.21, *Customer Disclosures*.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

additional options in seeking trade executions on our trading facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2009-13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2009-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2009-13 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21639 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60602; File No. SR-OCC-2009-14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Clear Options Based on Index-Linked Securities

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on August 12, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to permit OCC to clear options based on index-linked securities ("Index-Linked Securities").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Index-Linked Securities are non-convertible debt of a major financial institution that typically have a term of at least one year but not greater than thirty years and that provide for payment at maturity based upon the performance of an index or indices of equity securities or futures contracts, one or more physical commodities,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission has modified the text of the summaries prepared by OCC.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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.

⁸ 17 CFR 200.30-3(a)(12).

currencies or debt securities, or a combination of any of the foregoing. Index-Linked Securities are traded on national securities exchanges and meet the definition of "NMS Stock" under regulation NMS.⁴ The options exchanges will treat options on Index-Linked Securities ("Index-Linked Security Options") as standardized equity options for listing and trading purposes and will generally govern their trading by the same rules that are applicable to trading in other equity options. Exercises of Index-Linked Security Options will be settled by delivery of the underlying securities in the same manner as exercises of equity options.

OCC is proposing to amend its By-Laws and Rules to accommodate Index-Linked Security Options. OCC is proposing to add a definition of "index-linked security" to Article I of its By-Laws, to amend the definition of "stock option contract" in Article I of its By-Laws to include Index-Linked Security Options, and to amend the definition of "non-equity securities option contract" in Article I of its By-Laws to clarify that Index-Linked Security Options are excluded from the definition. OCC also is proposing to amend Interpretation and Policy .05 to Article VI, Section 11A of its By-Laws to clarify that call of an entire class of Index-Linked Securities will result in an adjustment of Index-Linked Security Options in the event of a cash merger, but that a partial call will not result in an adjustment. OCC also is proposing to add Interpretation and Policy .10 to Article VI, Section 11A of the By-Laws that would state that interest payments on Index-Linked Securities generally will be considered "ordinary cash dividends or distributions" within the meaning of paragraph (c) Article VI, Section 11A. In addition, OCC is proposing to add language to Rule 604(b)(4)(iii) stating that for the purposes of Rule 604, Index-Linked Securities will be treated as stock, assuming they meet the basic listing requirement applicable to stocks. Finally, OCC is proposing to amend Rule 604(b)(4) to conform to its practice of limiting the value of securities with the same CUSIP number, as opposed to securities of the same issuer, to 10% of the margin requirement of an account,

⁴ Securities Exchange Act Release No. 51808 (Jun. 9, 2005), 70 FR 37496 (Jun. 29, 2005). "NMS Stock" is defined in Rule 600(b)(47) of Regulation NMS as "any NMS security other than an option." The definition of "NMS Security" in Rule 600(b)(46) of Regulation NMS includes any security for which transaction reports are collected and disseminated under an effective national market system plan. Because Index-Linked Securities are exchange traded, they fall within this definition.

and proposing to add Interpretation and Policy .14 to Rule 604(b)(4) stating that OCC may disapprove for margin credit a security that otherwise meets the Rule 604(b) criteria if other factors warrant such a disapproval.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder because the proposed change will promote the prompt and accurate clearance and settlement of transaction in Index-Linked Security Options by providing that such options will be cleared and settled subject to the same rules and procedures that have been used successfully by OCC to clear and settle stock options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁵ 15 U.S.C. 78q-1.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2009-14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2009-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_09_14.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2009-14 and should be submitted on or before September 23, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-21638 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60598; File No. SR-ISE-2009-45]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Changes to Rule 312 in Connection With the Purchase by International Securities Exchange Holdings, Inc. of Equity Interests in Optifreeze, LLC

September 1, 2009.

I. Introduction

On July 23, 2009, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² to amend ISE Rule 312 (Limitation on Affiliation between the Exchange and Members) in connection with the capital contribution by its parent company, International Securities Exchange Holdings, Inc. (“ISE Holdings”), in Optifreeze LLC, a Delaware Limited Liability Company (“Optifreeze”). The proposed rule change was published for comment in the **Federal Register** on July 30, 2009.³ The Commission received no comments on the proposal. On August 28, 2009, ISE filed Amendment No. 1 to the proposed rule change.⁴ Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment. This order approves the proposed rule change, as modified by Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 60382 (July 24, 2009), 74 FR 38068 (“Notice”).

⁴ In Amendment No. 1, the Exchange made technical corrections to the filing. Specifically, in Amendment No. 1, ISE removed text that is not relevant. As originally proposed, ISE Rule 312(c)(4) would require the Exchange and Ballista Securities LLC to “establish and maintain procedures and internal control reasonably designed to ensure that Ballista Securities LLC and its affiliates do not have access to nonpublic information relating to the Exchange obtained as a result of ISE Holdings’ ownership interest in Ballista Securities LLC, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound routing to the Exchange.” Amendment No. 1 deletes the clause “in connection with the provision of inbound routing to the Exchange” from proposed ISE Rule 312(c)(4) and from the related discussion in the filing, as Ballista Securities’ services are not limited to inbound routing to the Exchange.

In Amendment No. 1, ISE also clarified that the proposal is for a one year pilot period.

II. Overview

On June 5, 2009, ISE Holdings entered into a Membership Purchase Agreement (“Purchase Agreement”) with Optifreeze. Ballista Securities LLC (“Ballista Securities”), a wholly-owned subsidiary of Optifreeze, is a member of the Exchange. Pursuant to the Purchase Agreement, ISE Holdings contributed cash to the capital of Optifreeze in exchange for membership interests representing 8.57% of the aggregate membership interests in Optifreeze. As a result of the purchase, ISE Holdings became a member of Optifreeze and is entitled to appoint one representative to the Optifreeze Board of Directors, but does not have any voting or other control arrangements with any other members of Optifreeze relating to its investment in Optifreeze.

In connection with the capital contribution by ISE Holdings in Optifreeze, the Exchange proposes to amend ISE Rule 312 (Limitation on Affiliation between the Exchange and Members) to allow for ISE Holdings’ ownership interest in Ballista Securities on a one year pilot basis, and to set forth certain limitations and obligations regarding that relationship. ISE Rule 312 provides, in part, that, without prior Commission approval, the Exchange, or any entity with which the Exchange is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member or non-member owner. As a result of the transaction, an affiliate of the Exchange, ISE Holdings, maintains an indirect ownership interest in an ISE member, Ballista Securities, which, without Commission approval, would violate ISE Rule 312.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in

⁵ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

In the past, the Commission has expressed concern that the affiliation of an exchange, or an affiliate of the exchange, with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.⁷ The proposed relationship raises similar concerns. ISE Rule 312 provides, in relevant part, that: “Without prior SEC approval, the Exchange, or any facility of the Exchange, or any entity with which the Exchange or any facility of the Exchange is affiliated shall not, directly or indirectly through one or more intermediaries, acquire or maintain an ownership interest in a Member or non-member owner.” As discussed above, the Exchange’s parent, ISE Holdings, now owns 8.57% of the aggregate membership interests in Optifreeze, and thereby maintains an indirect ownership interest in Ballista Securities, an Exchange member. Thus, because of its affiliation with the Exchange, ISE Holdings’ ownership interest in Ballista would violate ISE Rule 312, absent Commission approval.

ISE has requested that the Commission approve the proposed relationship described above on a temporary basis for a period of one year, subject to certain limitations and conditions set forth in proposed ISE Rule 312(c). Specifically, proposed ISE Rule 312(c) provides that (1) so long as ISE Holdings, or another affiliate of the Exchange, maintains an ownership interest in Ballista Securities; and (2) Ballista Securities remains a member of ISE:

- FINRA, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates (a “non-

⁷ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq’s proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving combination of NYSE and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62) (order approving acquisition of the American Stock Exchange by NYSE Euronext); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

affiliated SRO”), will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 under the Act⁸ with the responsibility for examining Ballista Securities for compliance with applicable financial responsibility rules;

- The Exchange shall enter into a plan pursuant to Rule 17d-2 under the Act⁹ with a non-affiliated SRO to relieve the Exchange of regulatory responsibilities for Ballista Securities with respect to rules that are common rules between the Exchange and the SRO;¹⁰

- With respect to unique ISE rules, ISE shall enter into a regulatory services contract with a non-affiliated SRO to perform certain regulatory responsibilities for Ballista Securities;

- The regulatory services contract with the non-affiliated SRO shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, “exceptions”) in which Ballista Securities is identified as a participant that has potentially violated ISE or Commission rules, and shall require that the non-affiliated SRO provide a report to the Exchange quantifying exceptions on not less than a quarterly basis;

- ISE shall establish and maintain procedures and internal controls reasonably designed to ensure that Ballista Securities and its affiliates do not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of ISE Holdings’ ownership interest in Ballista Securities, until such information is available generally to similarly situated members of the Exchange; and

- The ownership interest of ISE Holdings in Ballista Securities is subject to the foregoing conditions and is approved on a temporary basis, for a period not to exceed one year.

Additionally, ISE Holdings currently owns less than a 9% equity interest in Optifreeze and does not own a controlling interest in Optifreeze or otherwise have any veto or other special voting rights with respect to the management or operation of Optifreeze. The Exchange has acknowledged that neither it, nor any of its affiliates, may directly or indirectly increase its equity

ownership in Optifreeze without prior Commission approval.¹¹

The Commission finds the proposed limitations and conditions of Rule 312(c) to be consistent with the Act, particularly Section 6(b)(5) thereunder.¹² Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange’s self-regulatory obligations and its commercial interest when the exchange, or one of its affiliates, holds an ownership interest in a member, the proposed conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. The Commission believes that the oversight of Ballista Securities by a non-affiliated SRO,¹³ combined with the requirement that ISE provide the non-affiliated SRO with information regarding exceptions relating to Ballista Securities on not less than a quarterly basis, promote robust and independent regulation of Ballista Securities. ISE and Ballista Securities must also establish and maintain procedures and internal controls that are reasonably designed to prevent Ballista Securities and its affiliates from deriving any unfair informational advantage resulting from its relationship with ISE. Finally, the Commission believes that ISE’s proposal on a pilot basis will provide ISE and the Commission an opportunity to assess whether there might be any adverse consequences of the exception and whether a permanent exception is warranted. The Commission believes that, taken together, these limitations and conditions are reasonably designed to mitigate potential conflicts between the commercial interests of the Exchange or its parent company in Ballista Securities and the Exchange’s regulatory responsibilities with respect to Ballista Securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-ISE-2009-45) is hereby approved on a pilot basis through September 1, 2010.

¹¹ See Notice, 74 FR at 38069.

¹² 15 U.S.C. 78f(b)(5).

¹³ This oversight will be accomplished through a 17d-2 agreement and a regulatory services contract between ISE and a non-affiliated SRO. The Commission notes that ISE has not yet entered into such agreements.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21637 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60597; File No. SR-NYSE-2009-92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until September 8, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions if They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

August 31, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until September 8, 2009, the operation of interim NYSE Rule 128 (“Clearly Erroneous Executions for NYSE Equities”) which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.17d-1.

⁹ 17 CFR 240.17d-2.

¹⁰ Common rules are ISE rules that are substantially similar to the rules of the non-affiliated SRO.

of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until September 8, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,⁴ the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.⁵ On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until

October 1, 2008⁶ in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008⁷, the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009⁸, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009⁹ to finalize review of NYSE Arca's proposed amended CEE rule, which included market wide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).¹⁰ The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included market wide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009¹¹ to finalize review of NYSE Arca's proposed amended CEE rule. On

July 15, 2009¹² the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009 to finalize review of NYSE Arca's proposed amended CEE rule. On July 31, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 10, 2009¹³ to finalize review of NYSE Arca's proposed amended CEE rule. On August 11, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 21, 2009¹⁴ to finalize review of NYSE Arca's proposed amended CEE rule. On August 21, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 31, 2009¹⁵ to finalize review of NYSE Arca's proposed amended CEE rule.

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the operation of interim Rule 128 until September 8, 2009. Prior to September 8, 2009, the Exchange intends to formally file a 19b-4 rule change amending interim Rule 128.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")¹⁶ for this proposed rule change is the requirement under Section 6(b)(5)¹⁷ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As articulated more fully in the "Purpose" Section above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

⁴ See Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR-NYSE-2008-09).

⁵ See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR-NASDAQ-2007-001).

⁶ See Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR-NYSE-2008-63).

⁷ See Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR-NYSE-2008-99).

⁸ See Securities Exchange Act Release No. 59255 (January 15, 2009) 74 FR 4496 (January 26, 2009) (SR-NYSE-2009-02).

⁹ See Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR-NYSE-2009-26).

¹⁰ See Securities Exchange Act Release No. 59838 (April 28, 2009) 74 FR 20767 (May 5, 2009) (SR-NYSEArca-2009-36) (See NYSE Arca Rule 7.10).

¹¹ See Securities Exchange Act Release No. 60131 (June 17, 2009) 74 FR 30196 (June 24, 2009) (SR-NYSE-2009-57).

¹² See Securities Exchange Act Release No. 60312 (July 15, 2009) 74 FR 36298 (July 22, 2009) (SR-NYSE-2009-70).

¹³ See Securities Exchange Act Release No. 60419 (August 7, 2009) 74 FR 39987 (August 10, 2009) (SR-NYSE-2009-79).

¹⁴ See Securities Exchange Act Release No. 60478 (August 11, 2009) 74 FR 41769 (August 18, 2009) (SR-NYSE-2009-81).

¹⁵ See Securities Exchange Act Release No. 60563 (August 21, 2009) 74 FR 44423 (August 28, 2009) (SR-NYSE-2009-87).

¹⁶ 15 U.S.C. 78f(a) [sic].

¹⁷ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)²¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay²² is consistent with the protection of investors and the

public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSE-2009-92 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21636 Filed 9-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60592; File No. SR-BX-2009-050]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

August 31, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 17, 2009, NASDAQ OMX BX, Inc. ("BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed rule change on September 1, 2009. The text of the proposed rule change is attached as Exhibit 5 and is available at <http://nasdaqomxbx.cchwallstreet.com>.³

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Exhibit 5 is attached to the rule filing filed with the Commission but not to this release. The text of the proposed rule change is available at BX, on its Web site (<http://nasdaqomxbx.cchwallstreet.com>), and at the Commission's Public Reference Room.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6).

²² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to modify its fees to execute transactions on the NASDAQ OMX BX Equities System.⁴ For securities listed on The NASDAQ Stock Market ("NASDAQ") or the New York Stock Exchange ("NYSE"), BX currently provides a credit of \$0.0006 per share executed to members accessing liquidity, with no charge or credit to members providing liquidity. Under the modified fee schedule, BX will lower the credit for accessing liquidity to \$0.0001 per share executed and assess a charge of \$0.0003 per share executed to members providing liquidity. Although the change will result in a small fee increase, the fee change is designed to continue BX's strategy of becoming a preferred routing destination for firms seeking to access liquidity at extremely low cost and a preferred market for firms that wish to post liquidity in a venue to which growing numbers of firms route. The change also reverses an "inverted" fee structure in which rebates associated with the execution of an order exceeded charges.

For securities other than those listed on NASDAQ and NYSE, BX currently charges a fee of \$0.0014 per share executed to access liquidity and provides a credit of \$0.002 per share executed for providing liquidity. Under the modified fee schedule, BX will raise the fee to access liquidity to \$0.0016 and lower the liquidity provider credit to \$0.0014. Although the change will result in a small fee increase, the level of fees is consistent with BX's goal of offering liquidity at extremely low cost to investors, and also reverses an inverted fee structure.

⁴ The changes all relate to transactions that execute at prices of \$1 or more. For transactions at prices below \$1, there is a charge of 0.1% of total transaction cost to remove liquidity and no charge or rebate to provide liquidity.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. The impact of the changes upon the net fees paid by a particular market participant will depend upon the types of stocks that it trades, the order types that it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed changes will continue BX's goal of allowing members to access available liquidity at extremely low cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-050. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-BX-2009-050 and should be submitted on or before September 29, 2009.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21635 Filed 9-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60594; File No. SR-DTC-2009-11]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Eliminate One of the Indemnity Surety Programs in the Profile Modification System

August 31, 2009.

I. Introduction

On June 11, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2009-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change was published for comment in the **Federal Register** on July 20, 2009.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change eliminates one of the Indemnity Surety Programs ("PSP II") of DTC's Profile Modification System ("Profile").³

On April 19, 2000, the Commission approved a DTC rule filing to establish Profile,⁴ an electronic communication system between transfer agents that are Direct Registration System ("DRS") Limited Participants ("Limited Participants") and broker-dealers that are DRS Participants ("Participants"). In May 2000, DTC implemented Profile. Profile allows Participants to submit electronically an instruction to move a share position from an account at the Limited Participant to the Participant's account at DTC ("Electronic Participant Instruction"). Profile also allows Limited Participants to submit an instruction for the movement of a share

position from a Participant's account at DTC to an account at the Limited Participant ("Electronic Limited Participant Instruction;" together with Electronic Participant Instruction, "Electronic Instruction"). A Participant or Limited Participant submitting an Electronic Instruction through Profile is required to agree to a Participant Terminal System ("PTS") screen indemnity ("Screen Indemnity").

On November 17, 2000, the Commission approved a DTC rule filing to establish the Profile Indemnity Surety Program ("PSP").⁵ Under PSP, all users of Profile that agree to the Screen Indemnity as part of their use of Profile must procure a surety bond ("Surety Bond") to back the representations under the Screen Indemnity.⁶

On June 26, 2008, the Commission approved a DTC rule filing to establish PSP II,⁷ which provides for a coverage limit of \$7.5 million per transaction with an annual aggregate limit of \$15 million. Users of PSP II are required to pay an annual premium of \$6,000 to a surety provider and a DTC administration fee of \$250.

On June 3, 2009, the Commission approved a DTC rule filing to establish a new Profile Indemnity Insurance Program ("PIP II") to replace PSP II.⁸ PIP II will account for the additional, larger value Profile transactions that DRS currently handles by providing the same coverage limits (*i.e.*, \$7.5 million per transaction with an annual aggregate limit of \$15 million) at the same annual premium (*i.e.*, \$6,000 to a provider and a \$250 administration fee to DTC) as PSP II without requiring users of Profile to procure a surety bond. Since PIP II

will perform the same function of PSP II, DTC is eliminating PSP II.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),⁹ which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁰ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-DTC-2009-11) be, and hereby is, approved.¹²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21619 Filed 9-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60610; File No. SR-BX-2009-058]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(2).

¹² In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁵ Securities Exchange Act Release No. 43586 (Nov. 17, 2000), 65 FR 70745 (Nov. 27, 2000) [File No. SR-DTC-2000-09].

⁶ Participation in PSP requires the payment of an annual premium of \$3,150 to a surety provider and an administration fee of \$250 to DTC. The PSP surety provider provides for a coverage limit of \$3 million per transaction with an annual aggregate limit of \$6 million. On September 14, 2005, the Commission approved a DTC rule filing to establish the Profile Indemnity Insurance Program ("PIP"), which serves as an alternative to PSP. Securities Exchange Act Release No. 52422 (Sept. 14, 2005), 70 FR 55196 (Sept. 20, 2005) [File No. SR-DTC-2005-11]. PIP allows users of Profile that agree to the Screen Indemnity have the option to procure insurance relating to a particular securities transaction according to the value of the securities transaction. PIP provides a coverage limit of \$25 million per transaction with an annual aggregate limit of \$100 million. In addition to any pass-through fee from the insurer, DTC charges users participating in PIP an annual administration fee of \$250 and a per transaction fee of \$27.50.

⁷ Securities Exchange Act Release No. 58042 (Jun. 26, 2008), 73 FR 39067 (July 8, 2008) [File No. SR-DTC-2008-04].

⁸ Securities Exchange Act Release No. 60036 (Jun. 3, 2009) 74 FR 28085 (Jun. 12, 2009) [File No. DTC-2009-09].

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 60304 (Jul. 14, 2009), 74 FR 35221.

³ DTC has created a Profile Indemnity Insurance Program ("PIP II") to replace the PSP II. Securities Exchange Act Release No. 60036 (Jun. 3, 2009), 74 FR 28085 (Jun. 12, 2009) [File No. SR-DTC-2009-09].

⁴ Securities Exchange Act Release No. 42704 (Apr. 19, 2000), 65 FR 24242 (Apr. 25, 2000) [File No. SR-DTC-2000-04].

thereunder,² notice is hereby given that on September 1, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Public Customer Orders on BOX which are not executable against the BOX Book are routed as Principal Acting as Agent ("P/A") Orders via the OCC Hub System⁵ to away exchanges for execution. On August 12, 2009, the Exchange filed a fee amendment with the Commission exempting outbound P/A Orders from being charged transaction

fees.⁶ The Exchange believes that exempting all outbound P/A Orders from fees may tempt BOX Options Participants to increase non executable order flow to BOX in order to avoid fees on other exchanges. In order to eliminate the abusive use of this exemption, the Exchange proposes to impose a fee of \$0.50 per contract for all transactions made in excess of 4,000 contracts per month for an individual BOX Options Participant. The proposed change will have no effect on the billing of orders of non-BOX Options Participants including any orders received through the OCC Hub. In addition, BOX Options Participants may avoid paying the proposed fee by choosing to designate their order as Fill and Kill ("FAK"). FAK orders are not eligible for routing to away exchanges. FAK orders are executed on BOX, if possible, and then cancelled.

For example, if a Public Customer Order is entered into the BOX Trading Host and is routed to an away market as an outbound P/A Order and subsequent to the routing executed, the trade execution will be free for the first 4,000 contracts traded each month, regardless of class. All subsequent Public Customer Orders traded as a result of an outbound P/A Order in excess of 4,000 contracts will be charged \$0.50 per contract. Previously, such a transaction was exempt from transaction charges.

The Exchange requests that the effective date of the proposed rule change be September 1, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(4) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the proposed change will allow the Exchange to charge the appropriate fees and provide the appropriate credits with respect to orders routed by BOX to away exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-058 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-058. 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

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Terms not otherwise defined herein shall have the meaning proscribed in the BOX Rules.

⁶ See Securities Exchange Act Release No. 60504 (August 12, 2009), 74 FR 42724 (August 24, 2009) (SR-BX-2009-047).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BX-2009-058 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21642 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60596; File No. SR-BX-2009-057]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Group, LLC

August 31, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on August 31, 2009, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing an amendment to the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently submitted a proposed rule change⁴ with the Commission which eliminated the Liquidity Make or Take Pricing Structure on BOX, except for inbound P and P/A Order executions.⁵ Instead of the fees and credits that had previously been applied under the Liquidity Make or Take Pricing Structure "standard" transaction fees now apply to all classes listed for trading on BOX that are included in the Penny Pilot Program, as referenced in Chapter V, Section 33 of the BOX Rules ("Penny Pilot Classes").⁶

Executions on BOX resulting from inbound P and P/A Orders sent via the OCC Hub are subject to the same billing treatment as other executions on BOX.

⁴ See SR-BX-2009-057.

⁵ Terms not otherwise defined herein shall have the meaning proscribed in the Options Order Protection and Locked/Crossed Market Plan, or the BOX Rules, respectively.

⁶ A recent proposal submitted by the Exchange for immediate effectiveness previously removed the following three (3) exchange-traded fund share classes from the Liquidity Make or Take pricing structure: (1) Standard & Poor's Depository Receipts® (SPY); (2) Powershares® QQQ Trust Series 1 (QQQQ); and (3) iShares Russell 2000® Index Fund (IWM). See Securities Exchange Act Release No. 60221 (July 1, 2009), 74 FR 32996 (July 9, 2009) (SR-BX-2009-033). These three classes remain subject only to "standard" fees.

In conjunction with the above referenced rule change the Exchange is now proposing to remove Section 7 of the Fee Schedule in its entirety and the application of the Liquidity Make or Take Pricing to inbound P and P/A Orders sent to and executed on BOX in these Penny Pilot Classes. As a result the Liquidity Make or Take Pricing Structure will no longer exist on BOX. Standard P and P/A fees, as set forth in Section 4 of the BOX Fee Schedule, shall instead apply to inbound P and P/A Orders in all Penny Pilot Classes. In addition, the current Section 8 of the Fee Schedule will be renumbered as new Section 7. If approved, this proposal will conform inbound P and P/A fees with the fees charged to BOX Options Participants for the transactions in the same Penny Pilot Classes.

For example, an inbound P or P/A Order, routed to BOX from an away market executes against an order resting on the BOX Book. The inbound P or P/A Order is the remover of the liquidity. Prior to this proposal, such a transaction may have been subject to the fees set forth in the Liquidity Make or Take Pricing Structure, resulting in the applicable "take" fee (currently \$0.45) of Section 7 of the Fee Schedule. Under this proposal, the standard \$0.20 inbound P and P/A Order fee would apply.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(4) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities for the purpose of executing inbound P and P/A Orders that are routed to BOX from other market centers. In particular, this proposed fee change will treat inbound P and P/A Orders the same as other orders in Penny Pilot Classes and amend pricing for executions on BOX so as to better compete with the current pricing in place on other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. 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 (www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-BX-2009-057 and should be submitted on or before September 29, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register** pursuant to 19(b)(2)(B).¹¹ The proposal conforms the Exchange's fees charged for P Order and P/A Order executions in Penny Pilot Classes with the fees charged for other executions to BOX Participants in such Penny Pilot Classes. An accelerated approval will allow the Exchange to immediately implement a lower fee for market participants executing P Orders and P/A Orders on the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BX-2009-057) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21587 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

⁹ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(2)(B).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60591; File No. SR-BX-2009-048]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend the Grandfathered Rules of the Exchange

August 31, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 17, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Grandfathered Rules of the Exchange. This proposal seeks to incorporate certain provisions of the former Constitution of the Boston Stock Exchange into the Grandfathered Rules. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/ Filings/>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange in August 2008. In the order approving the acquisition, the Constitution of the Boston Stock Exchange was replaced with the By-Laws of the Exchange as amended.³ Thereafter, the Exchange adopted new, different rules for equities trading, the "Equity Rules" and the Rules, under the new Exchange, were renamed NASDAQ OMX BX [sic].⁴ In addition, the rules of the Exchange under its former name remained in effect. These rules, as amended subsequent to that acquisition, are entitled the "Grandfathered Rules." The Grandfathered Rules are operative to the extent that they apply to the Boston Options Exchange Group, LLC ("BOX") and to Options Participants on the Exchange, and are to be read in conjunction with the Rules of the BOX.

This proposal seeks to incorporate certain provisions of the former Constitution of the Boston Stock Exchange into the Grandfathered Rules. The provisions regard the following: (a) Participation (formerly Membership) rules, to supplement the By-Laws and the Grandfathered Rules to direct the Participants and prospective participants to Section 6(c) of the Securities and Exchange Act of 1934, as cited in the proposed rule text regarding the investigation and acceptance of an applicant; (b) Non-liability of the Exchange provision, to reinforce to Participants the "non-liability" of the Exchange for damages sustained from use of the facilities of the Exchange; (c) Insolvent Participants, to provide guidance for Insolvent Participants to notify the Exchange, of such insolvency and to state that the Exchange will notify the Commission of such insolvency; and (d) Exchange Inquiries to remind Participants that they may be subject to expulsion or suspension for failure to respond to an Exchange Inquiry.

The Exchange is seeking retroactive application of this proposal to the date which the new By-Laws were approved by the Commission.⁵ These rules supplement the existing Grandfathered

Rules and do not substantially alter the rules in their current format.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposal will provide for the BOX Options Participants to follow the Rules as they existed at the time of the close.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-048. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2009-048 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-21585 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

³ Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02, -23, -25; SR-BSECC-2008-01).

⁴ Securities Exchange Act Release No. 34-59154 (December 28, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48).

⁵ See *supra* note 3.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60589; File No. SR-CBOE-2009-047]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Permit All CBSX Market-Makers To Operate From the CBSX Floor Post

August 31, 2009.

On July 2, 2009, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² a proposed rule change to allow all CBSX Market-Maker types to operate from the Floor Post. The exchange filed Amendment No. 1 to the proposed rule change on July 23, 2009. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 30, 2009.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

CBSX is an all-electronic stock marketplace operated by the Exchange. The CBSX Floor Post is a location on the CBOE trading floor where market-makers can be stationed to respond to stock price discovery requests from CBOE’s trading floor community. The Floor Post is a location for price discovery only; since CBSX is an electronic exchange, there is no open-outcry trading permitted, and any trades agreed to at the Floor Post must be entered into the CBSX system in accordance with the applicable rules.⁴

Currently, only members who serve as Designated Primary Market-Makers (“DPMs”) on CBSX may operate from the CBSX Floor Post.⁵ The Exchange now proposes to permit all CBSX Market-Makers types to operate from the Floor Post. The Floor Post will continue to restrict any sightlines to the equity options trading posts.

After careful review, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a

national securities exchange.⁶ In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act⁷—which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest—because it will promote additional price discovery at the CBSX Floor Post.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-2009-047) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21583 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60587; File No. SR-Phlx-2009-73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Standard and Poor’s Depository Receipts/SPDRs (“SPY”) Equity Options

August 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹, and Rule 19b-4 thereunder,² notice is hereby given that on August 20, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to assess a \$.05 per contract fee for Standard and Poor’s Depository Receipts/SPDRs (“SPY”) ³ equity options that are directed to specialists, Streaming Quote Traders (“SQTs”) ⁴ and Remote Streaming Quote Traders (“RSQTs”) ⁵ by a member or member organization and are executed electronically in lieu of the existing specialist and Registered Options Trader (on-floor) equity options transaction fees.

While changes to the Exchange’s fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after August 25, 2009.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 aspects of such statements.

³ SPY options are based on the SPDR exchange-traded fund (“ETF”), which is designed to track the performance of the S&P 500 Index.

⁴ An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

⁵ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* Securities Exchange Act Release No. 60375 (July 23, 2009), 74 FR 38071.

⁴ *See, e.g.*, CBOE Rule 52.11, Facilitation of Orders and Crossing Trades.

⁵ No CBSX DPMs are stationing personnel at the Floor Post at this time.

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 create incentives for specialists, SQTs and RSQTs that receive directed order flow to provide liquidity in SPY equity options contracts sent to the Exchange for execution. The Exchange believes this incentive will allow the Exchange to remain competitive, while encouraging additional order flow in options overlaying SPY. The Exchange proposes to assess a \$.05 per contract fee in SPY equity options that are directed to specialists, SQTs and RSQTs ("Directed Participants" or "Directed Specialists, RSQTs, or SQTs"⁶) by a member or member organization ("Order Flow Provider" or "OFP"), and executed electronically on the Exchange's electronic trading platform for options, the Phlx XL II system. The \$0.05 per contract rate would be assessed to the Direct Participants, in lieu of the equity options transactions fees of \$.22 per contract side for Registered Option Traders ("ROTs") (on-floor) and \$.21 per contract side for specialists on contracts executed electronically. Customers who are on the contra-side of a trade involving Directed Orders would not be subject to a fee and will remain free of charge.

The Exchange currently provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the "Volume Threshold") by assessing \$ 0.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charges. The Exchange aggregates the trading activity of separate ROTs (on-floor) and specialists for purposes of the Volume Threshold if there is at least 75% common ownership between the member organizations as reflected on each member organization's Form BB, Schedule A. The Exchange proposes to assess a \$0.01 per contract instead of a \$0.05 per contract fee for SPY equity option transactions when the Directed Participant exceeds the 4.5 million contracts Volume Threshold in a given

⁶ See Exchange Rule 1080(l), "...The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

⁷ See Exchange Rule 1080(l), "...The term 'Order Flow Provider' ('OFP') means any member or member organization that submits, as agent, customer orders to the Exchange."

month. The contract volume associated with SPY equity options contracts, including the proposal to assess a \$.05 per contract fee in SPY equity options, would therefore be included in the Volume Threshold calculation and the \$0.01 per contract rate would apply in the event a Directed Participant reaches the 4.5 million contracts Volume Threshold.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it would apply evenly to specialists, SQTs and RSQTs transacting SPY equity options contracts sent to the Exchange for execution, in that any specialist, SQT or RSQT [sic]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and paragraph (f)(2) of Rule 19b-4¹¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2009-73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2009-73, and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21457 Filed 9-4-09; 8:45 am]

BILLING CODE 8010-01-P

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Fractional Aircraft Ownership Programs**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. Fractional Ownership is a program that offers increased flexibility in aircraft ownership.

DATES: Please submit comments by November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267-9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA).

Title: Fractional Aircraft Ownership Programs.

Type of Request: Extension without change of an approved collection. OMB Control Number: 2120-0684.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 11 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 45 minutes per response.

Estimated Annual Burden Hours: An estimated 16,484 hours annually.

Abstract: Fractional Ownership is a program that offers increased flexibility in aircraft ownership. Owners purchase shares of an aircraft and agree to share their aircraft with others having an ownership share in that same aircraft. Owners agree to put their aircraft into a "pool" of other shared aircraft and to lease their aircraft to another owner in that pool. The aircraft owners use a common management company to maintain the aircraft and administer the leasing of the aircraft among the owners.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES-200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance

of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 31, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E9-21417 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Flight Operational Quality Assurance (FOQA) Program**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection, FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations.

DATES: Please submit comments by November 9, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267-9895, or by e-mail at: Carla.Mauney@faa.gov.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Flight Operational Quality Assurance (FOQA) Program.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120-0660.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 30 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 360 hours annually.

Abstract: FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety. 14 CFR 13.401 codifies protection from punitive enforcement action based on FOQA information and requires operators with FAA approved FOQA programs to provide aggregate FOQA data to the FAA. Aggregate FOQA information provided to the FAA is protected from public release under 14 CFR Part 193.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES-200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 31, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. E9-21418 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****Hazardous Materials-Automated Cargo Communication for Efficient and Safe Shipments HM-ACCESS) Initiative; Public Meeting**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that PHMSA will conduct a public meeting to receive input and guidance for the upcoming Proof-of-Concept Study on the use of

electronic data sharing in lieu of paper hazardous materials shipping documents.

DATES: Tuesday, October 13, 2009 9 a.m.–3:30 p.m. and Wednesday October 14, 2009 9 a.m.–3:30 p.m.

ADDRESSES: The meeting will be held at the DOT Headquarters, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Notification: Persons planning to attend should send an e-mail to ryan.paguet@dot.gov including their name and contact information (company/address/telephone).

Conference Call Capability/Live Meeting Information: Due to the nature and length of the meeting, remote access/call-in capability will not be provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, P.G., Assistant Director, Office of International Standards, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this public meeting will be to discuss the forthcoming HM-ACCESS Proof of Concept Study and specify requirements to be included in the Study's statement of work. In holding this public meeting, PHMSA seeks to receive feedback from a wide audience, representing myriad portions of the HM industry, including HM shippers, transporters, freight forwarders, emergency responders, other government agencies, technology providers, etc.

PHMSA's HM-ACCESS initiative aims to identify and eliminate barriers to the use of paperless tracking and hazard communications technologies, thereby (1) improving the availability and accuracy of hazard information; (2) improving the speed by which information is available to emergency responders when incidents occur; (3) and allowing U.S. companies to compete more effectively in the global economy by using the best tools available.

Spurred by competitive demands, just-in-time delivery requirements, and the globalization of supply chains, the transportation and logistics industries have embraced modern communication technologies; yet hazardous materials transport remains in a world of paper. The HM sector has harnessed many of the same technologies for streamlining commercial interchange, but information about shipments and packages is conveyed by markings on the package, placards on the vehicle, and shipping papers. Paper-based

communication is slow, limits the information available, and is fraught with the potential for error. Inefficiencies and errors in the handling of hazardous materials produce increased risk throughout the transport chain due to increased storage time, mishandling, and ineffective or inaccurate hazard communication. Moreover, paper-based communication may be least effective at the very time when hazard communication is most critical—in the immediate aftermath of a transportation incident.

We expect the integration of electronic transfer of shipping information to be generational. A number of hazardous materials carriers, vessel, rail, and air transport organizations have stated that they are ready to begin utilizing electronic shipping paper technology, subject only to regulatory authorization. In the highway mode, the larger, technologically-advanced companies may be prepared to implement electronic systems, but widespread use among the industry is a longer-term proposition. In any case, however, no part of the HM transportation sector can transition to new hazard communication systems without ensuring that emergency response officials are prepared and equipped to receive the hazard information at least as quickly and reliably as under the current system.

Discussion points include:

1. What are shipping papers used for?
2. What information from a shipping paper should be immediately conveyed to emergency responders in the event of an incident?
3. What work has been/is being done on standardizing shipping paper information?
4. When electronic shipping papers are used, how is required information shared with emergency responders (professional, volunteer, urban, rural, etc.)? How is it shared with compliance inspectors/officers?
5. What benefits will electronic shipping papers have for companies shipping HM? HM transporters? Freight forwarders? Emergency responders? Other government agencies?
6. What challenges will electronic shipping papers create for companies shipping HM? HM transporters? Freight forwarders? Emergency responders? Other government agencies?
7. What existing efforts (government or private) are related to HM-ACCESS? Can these efforts be coordinated?

For more information on the HM-ACCESS and to check for updates on information related to this public meeting visit PHMSA's HM-ACCESS

Web site at <http://hazmat.dot.gov/HM-ACCESS/index.html>.

R. Ryan Posten,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9–21415 Filed 9–4–09; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Plano, Illinois

Waiver Petition Docket Number FRA–2009–0066

The City of Plano, Illinois (City) seeks a permanent waiver of compliance from a certain provision of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Part 222. The City intends to establish a New Quiet Zone under the provisions of 49 CFR Part 222.39. Specifically, the City is seeking a waiver from the provisions of 49 CFR Part 222.9, definition of a non-traversable curb so that an existing public crossing that is equipped with flashing lights, gates and medians that complies with all of the requirements necessary to be a “gates and medians” supplemental safety measure (SSM) with non-traversable curbs, except for the fact that the posted highway speed limit is 45 miles per hour (mph) instead of 40 mph as required in the definition, be deemed an acceptable SSM.

49 CFR Part 222.9, the definition of Non-traversable curb reads as follows: “Non-traversable curb means a highway curb designed to discourage a motor vehicle from leaving the roadway. Non-traversable curbs are used at locations where highway speeds do not exceed 40 miles per hour and are at least six inches high. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.”

The City is in the process of establishing a new quiet zone along the BNSF Railway's (BNSF) Chicago Division, Mendota Subdivision, which

would extend from approximately Milepost 48.71 to Milepost 50.76. The new quiet zone will consist of two public at-grade crossings: Eldamain Road (DOT #079586F) and Needham Road (DOT #079588U). The City seeks a waiver from the requirement that medians with non-traversable curbing may not be used where highway speeds exceed 40 mph. The Eldamain Road grade crossing is equipped with standard flashing lights, flashing lights on cantilevers, gates and medians that are 200 feet in length. The curbing on the medians is at least 6 inches in height. The posted highway speed is 45 mph.

The City provides several reasons why the 5 mph difference in speed limit would not diminish the effectiveness of the SSM, and thus the waiver should be granted. First, the existing median is much wider (12-foot) than the typical medians used for this application. The median is also twice as long as the nominal required length (100-foot) as it is 200 feet in length. The City points out that the median installation has performed properly and without incident since its installation, approximately 13 years ago.

Secondly, the design used by the Kendall County Highway Department (the public authority responsible for roadway and has consented to the establishment of the proposed new quiet zone) follows the Illinois Department of Transportation standard which allows curbed medians on highways with speed limits of 40 or 45 mph. The City feels that this standard should be allowable under the clause "Additional design specifications * * *" in the definition.

Lastly, the City states that the Kendall County Highway Department opposes the creation of a 40 mph speed zone in the vicinity of the crossing as it wants to avoid multiple speed zones on the same roadway. However, the County Engineer has expressed a willingness to post advisory 40 mph signs in advance of the crossing in each direction.

The City's waiver petition did not directly address efforts made to have the BNSF join in the waiver request. However, attachments that were included with the waiver request indicated that communication between the two parties on the subject of a joint waiver request did occur. On June 15, 2009, a representative of the consulting firm utilized by the City to assist with the establishment of the new quiet zone sent an e-mail to the Manager of Public Projects for BNSF. The e-mail specifically requested that BNSF participate in the process so that the waiver could be forwarded to FRA as a

"joint waiver request" and to reconsider its interpretation of the definition of the non-traversable curb. In a letter to the City dated June 22, 2009, BNSF acknowledged receipt of the joint waiver request but did not specifically address the issue. BNSF stated that the questions should be posed to FRA and that BNSF was going by FRA's regulation which provides that the highway speed must be 40 mph or less. The City did not provide any justification as to why the absence of BNSF's participation in the waiver would affect safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0066) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• *Fax:* 202-493-2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC on August 31, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9-21503 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Vancouver, Washington

Waiver Petition Docket Number FRA-2009-0053

The City of Vancouver, Washington (City) seeks a temporary waiver of compliance from certain provisions of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR Part 222. The City intends to establish a New Partial Quiet Zone under the provisions of 49 CFR 222.39. Specifically, the City is seeking a waiver from: (1) The provisions of 49 CFR 222.9, definition of a New Partial Quiet Zone so that the hours of the new partial quiet zone will be from 10 p.m. to 6 a.m.; and (2) the provisions of 49 CFR 222.35(b)(1) so that the active grade crossing warning devices at Jefferson Street are not required to be equipped with constant warning time devices.

49 CFR 222.9, definition of New Partial Quiet Zone reads as follows: "New Partial Quiet Zone means a segment of a rail line within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded between the hours of 10 p.m. and 7 a.m., but are routinely sounded during the remaining portion of the day, and which does not qualify as a Pre-Rule Partial Quiet Zone or an Intermediate Partial Quiet Zone."

49 CFR 222.35(b)(1) reads as follows: "Each public highway-rail grade crossing in a New Quiet Zone established under this part must be

equipped, no later than the quiet zone implementation date, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing and that conform to the standards contained in the MUTCD. Such warning devices shall be equipped with constant warning time devices, if reasonably practical, and power-out indicators." The purpose of constant warning time devices (CWT) is so that the crossing warning devices provide the same amount of warning time regardless of the speed of the approaching train.

The City is in the process of establishing a new partial quiet zone along the BNSF Railway's (BNSF) Northwest Division, Fallbridge Subdivision, which would extend from approximately Milepost 9.95 to Milepost 10.51. The new partial quiet zone will consist of three public at-grade crossings: West 11th Street (DOT #092276S), Jefferson Street (DOT #090249N), and West 8th Street (DOT #090248G). The City seeks a waiver from the defined hours for a new partial quiet zone (10 p.m. to 7 a.m.) in order to have the new partial quiet zone's hours to be from 10 p.m. to 6 a.m. The City states that the change is sought to provide noise relief during the downtown residents and convention visitors prime sleeping periods while minimizing the effect on peak commercial traffic movements or safety. The City plans to utilize a temporary closure supplementary safety measure at the West 8th Street crossing and that there would be virtually no adverse impact on highway traffic if the street was open to traffic from 6 a.m. to 10 p.m.

The City's new partial quiet zone plan includes the use of medians at the Jefferson Street grade crossing. The medians will be alternative safety measures as the southern median will only extend 50 feet from the gate. Jefferson Street is currently equipped with automatic warning devices consisting of standard flashing lights with gates. However, the warning devices are not equipped with CWT. The City states that the use of CWT at this crossing is not reasonably practical at this location since the crossing will be closed by December 31, 2011, as part of the City's Waterfront Access project.

The City is requesting a temporary waiver through the end of 2011, at which time the crossings will be closed as part of the City's Waterfront Access project.

The City states that it works closely with BNSF on a variety of projects and believes that it has a good working relationship with the railroad. The City

contacted BNSF immediately concerning the proposed waivers and that the BNSF did not express any reservation with the proposed new partial quiet zone hours of 10 p.m. to 6 a.m. The City requested input from BNSF on the quiet zone improvements proposed for Jefferson Street but had not received a response. The City does not anticipate BNSF support for the portion of the waiver concerning CWT and decided to file the waiver petition alone in order to expedite the process. It also states that the lack of a joint submission will not compromise public safety or will applying the requirement of a joint submission be likely to significantly contribute to public safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0053) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>

Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC on August 31, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9-21504 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Bradford Bank: Baltimore, MD; 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 Bradford Bank, Baltimore, Maryland (OTS No. 01348), on August 28, 2009.

Dated: September 1, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9-21473 Filed 9-4-09; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 21, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1-888-912-1227 or 954-423-7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, October 21, 2009, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1-888-912-1227 or 954-423-7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the *Web site*: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21445 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, October 14, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, October 14, 2009, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1-888-912-1227 or 718-488-2085, or

write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the *Web site*: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21447 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 8, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or 954-423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be held Thursday, October 8, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1-888-912-1227 or 954-423-7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the *Web site*: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21448 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 7, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1-888-912-1227 or 954-423-7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be held Wednesday, October 7, 2009, at Noon, Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1-888-912-1227 or 954-423-7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the *Web site*: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21449 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multi-Lingual

Initiatives Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 8, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 or 718-488-3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be held Thursday, October 8, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1-888-912-1227 or 718-488-3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: <http://www.improveirs.org>.

The agenda will include various IRS Issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21450 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, October 22, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227 or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be held Thursday, October 22, 2009, at 8:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1-888-912-1227 or 206-220-6098, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21451 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 27, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1-888-912-1227 or 414-231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, October 27, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1-888-912-1227 or 414-231-2360, or write TAP Office

Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21452 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 20, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1-888-912-1227 or 414-231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, October 20, 2009 at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1-888-912-1227 or 414-231-2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E9-21459 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1-888-912-1227 or 414-231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, October 13, 2009, at 9:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1-888-912-1227 or 414-231-2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or post comments to the *Web site:* <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9-21460 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Joint Committee**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting

public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1-888-912-1227 or (515) 564-6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, October 28, 2009, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1-888-912-1227 or (515) 564-6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the *Web site:* <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9-21463 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 or 718 488-3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax

Issue Committee will be held Tuesday, October 13, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1-888-912-1227 or 718-488-3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the *Web site:* <http://www.improveirs.org>. The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9-21464 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 20, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, October 20, 2009, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1-888-912-1227 or 718-488-2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the *Web site:* <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9-21465 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227 or 954-423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, October 19, 2009, at 12:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1-888-912-1227 or 954-423-7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the *Web site:* <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9-21466 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, October 6, 2009.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1-888-912-1227 or 206-220-6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, October 6, 2009, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Dave Coffman. For more information please contact Mr. Coffman at 1-888-912-1227 or 206-220-6095, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the *Web site:* <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009,

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9-21461 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, October 21, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227 or 206-220-6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, October 21, 2009, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1-888-912-1227 or 206-220-6098, or write TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or post comments to the *Web site:* <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: August 31, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9-21462 Filed 9-4-09; 8:45 am]

BILLING CODE 4830-01-P

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H.R. 774/P.L. 111-50

To designate the facility of the United States Postal Service located at 46-02 21st Street in Long Island City, New York, as the "Geraldine Ferraro Post Office Building". (Aug. 19, 2009; 123 Stat. 1979)

H.R. 987/P.L. 111-51

To designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the "John Scott Challis, Jr. Post Office". (Aug. 19, 2009; 123 Stat. 1980)

H.R. 1271/P.L. 111-52

To designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the "Elijah Pat Larkins Post Office Building". (Aug. 19, 2009; 123 Stat. 1981)

H.R. 1275/P.L. 111-53

Utah Recreational Land Exchange Act of 2009 (Aug. 19, 2009; 123 Stat. 1982)

H.R. 1397/P.L. 111-54

To designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the "Caroline O'Day Post Office Building". (Aug. 19, 2009; 123 Stat. 1989)

H.R. 2090/P.L. 111-55

To designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the "Frederic Remington Post Office Building". (Aug. 19, 2009; 123 Stat. 1990)

H.R. 2162/P.L. 111-56

To designate the facility of the United States Postal Service

located at 123 11th Avenue South in Nampa, Idaho, as the "Herbert A Littleton Postal Station". (Aug. 19, 2009; 123 Stat. 1991)

H.R. 2325/P.L. 111-57

To designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the "Laredo Veterans Post Office". (Aug. 19, 2009; 123 Stat. 1992)

H.R. 2422/P.L. 111-58

To designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the "Kile G. West Post Office Building". (Aug. 19, 2009; 123 Stat. 1993)

H.R. 2470/P.L. 111-59

To designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the "Lieutenant Commander Roy H. Boehm Post Office Building". (Aug. 19, 2009; 123 Stat. 1994)

H.R. 2938/P.L. 111-60

To extend the deadline for commencement of construction of a hydroelectric project. (Aug. 19, 2009; 123 Stat. 1995)

H.J. Res. 44/P.L. 111-61

Recognizing the service, sacrifice, honor, and

professionalism of the Noncommissioned Officers of the United States Army. (Aug. 19, 2009; 123 Stat. 1996)

S.J. Res. 19/P.L. 111-62

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Aug. 19, 2009; 123 Stat. 1998)

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