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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0309; Directorate Identifier 2008–NM–173–AD; Amendment 39–16152; AD 2009–26–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200,and A340–300 Series Airplanes

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

ACTION: Final rule.

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

> Several cases have been reported of in-flight loss of the drive strut fitting from the movable fairing of flap track No. 3. Consequently, the flap track No. 3 fairing was detached from its aft end, and found hanging. Investigations have shown that the detachment of the aft lower drive strut fitting from the fairing occurred due to the four bonded inserts being pulled out.
>
> This condition, if not corrected, could lead to in-flight loss of the affected aircraft parts, potentially resulting in injuries to persons on the ground.

* * * * *

In addition, the potential unsafe condition includes the part potentially impacting the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 24, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 24, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 6, 2009 (74 FR 15401). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several cases have been reported of in-flight loss of the drive strut fitting from the movable fairing of flap track No. 3. Consequently, the flap track No. 3 fairing was detached from its aft end, and found hanging. Investigations have shown that the detachment of the aft lower drive strut fitting from the fairing occurred due to the four bonded inserts being pulled out.
>
> This condition, if not corrected, could lead to in-flight loss of the affected aircraft parts, potentially resulting in injuries to persons on the ground.
>
> For the reason described above, this AD requires the modification of the movable flap track fairing No. 3, both Left Hand (LH) and Right Hand (RH) side, and prohibits re-installation of unmodified units.

In addition, the potential unsafe condition includes the part potentially impacting the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Change Compliance Time

The Air Transportation Association, on behalf of its member Northwest Airlines (NWA), requests that we change the compliance time of the NPRM. NWA states that paragraph (f)(4) of the NPRM would prohibit installation of unmodified units after the effective date of the AD and that this restriction would have unintended consequences in a line maintenance environment when a fairing is removed for access during unscheduled maintenance because operators could not reinstall the fairing without doing the actions required by the AD. The commenter requests that we revise the NPRM to allow installation of unmodified units until the 60-month compliance time specified in paragraph (f)(1) of the NPRM has passed.

We partially agree. We did not intend to prohibit operators from reinstalling a fairing removed for maintenance. But allowing operators up to 60 months to intermix airworthy and potentially inadequate fairings would conflict with provisions of the Federal Aviation Regulations and would not ensure an adequate level of safety for the fleet. To clarify the requirement, we have revised paragraph (f)(4) in this final rule to prohibit "replacing"—instead of "installing"—the subject part.

We have also added a note to the FAA Differences paragraph to specify that parts cannot be put on as of the effective date of this AD.

Clarification of Unsafe Condition

In addition to the unsafe condition specified in the NPRM, the potential unsafe condition includes the part potentially impacting the airplane. We have revised the Summary section, Discussion section, and paragraph (e) of this AD accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S.

operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect 35 products of U.S. registry. We also estimate that it will take about 19 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $647 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $75,845, or $2,167 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–26–13 Airbus: Amendment 39–16152. Docket No. FAA–2009–0309; Directorate Identifier 2008–NM–173–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 24, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers (MSNs), except those on which Airbus Modification 55674 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all MSNs, except those on which Airbus Modification 55674 has been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Several cases have been reported of in-flight loss of the drive strut fitting from the movable fairing of flap track No. 3. Consequently, the flap track No. 3 fairing was detached from its aft end, and found hanging. Investigations have shown that the detachment of the aft lower drive strut fitting from the fairing occurred due to the four bonded inserts being pulled out.

This condition, if not corrected, could lead to in-flight loss of the affected aircraft parts, potentially resulting in injuries to persons on the ground.

For the reason described above, this AD requires the modification of the movable flap track fairing No. 3, both Left Hand (LH) and Right Hand (RH) side, and prohibits re-installation of unmodified units.

In addition, the potential unsafe condition includes the part potentially impacting the airplane.

Actions and Compliance

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

(1) Within 60 months after the effective date of this AD, modify the left- and right-hand movable flap track fairing No. 3, in accordance with Airbus Mandatory Service Bulletin A330–57–3095, Revision 02; or A340–57–4103, Revision 01; both dated April 3, 2008; as applicable.

(2) Modifying the left- and right-hand movable flap track fairing No. 3 is also acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD, in accordance with Airbus Service Bulletin A330–57–3095, Revision 01; or A340–57–4103; both dated August 28, 2007; as applicable.

(3) Installing a repaired left- and right-hand movable flap track fairing No. 3 using replacement of a damaged insert by through-bolts at the drive strut attachment fitting is acceptable for compliance with the requirements of paragraph (f)(1) of this AD if done before the effective date of this AD in accordance with the repair instructions specified in Chapter 57–56–11, page block 201, in one of the Airbus structural repair manuals listed in Table 1 of this AD, as applicable.

TABLE 1—STRUCTURAL REPAIR MANUALS ACCEPTABLE BEFORE THE EFFECTIVE DATE OF THIS AD

Document	Revision	Date
Airbus A330 Structural Repair Manual	60	October 1, 2008.
Airbus A330 Structural Repair Manual	61	January 1, 2009.
Airbus A340–200/–300 Structural Repair Manual	64	October 1, 2008.
Airbus A340–200/–300 Structural Repair Manual	65	January 1, 2009.

(4) As of the effective date of this AD, no person may replace a movable flap track fairing No. 3 on that airplane, unless the replacement fairing has been modified or repaired in accordance with the requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI prohibits replacement of the affected part after modification, but this AD prohibits replacing the affected part as of the effective date of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1320. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0153, dated August 8, 2008; and Airbus Mandatory Service BulletinsA330–57–3095, Revision 02, and A340–57–4103, Revision 01, both dated April 3, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330–57–3095, Revision 02, dated April 3, 2008; or Airbus Mandatory Service Bulletin A340–57–4103, Revision 01, dated April 3, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330–A340@airbus.com; Internet http://www.airbus.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 December 16, 2009.

Stephen P. Boyd,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–487 Filed 1–19–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27862; Directorate Identifier 2007–CE–036–AD; Amendment 39–16150; AD 2009–26–11]

RIN 2120–AA64

Airworthiness Directives; Thrush Aircraft, Inc. Model 600 S2D and S2R Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) to supersede AD (AD) 2006–07–15, which applies to Thrush Aircraft, Inc. Model 600 S2D and S2R (S–2R) series airplanes (type certificate previously held by Quality Aerospace, Inc. and Ayres Corporation). AD 2006–07–15 currently requires repetitive inspections of the 1/4-inch and 5/16-inch bolt hole areas on the wing front lower spar caps for fatigue cracking; replacement or repair of any wing front lower spar cap where fatigue cracks are found; and reporting of any fatigue cracks found to the FAA. AD 2006–07–15 also puts the affected airplanes into groups for compliance time and applicability purposes. Since we issued AD 2006–07–15, FAA analysis reveals that inspections are not detecting all existing cracks and shows the incidences of undetected cracks will increase as the airplanes age. Consequently, this AD retains the actions of AD 2006–07–15 and imposes a life limit on the wing front lower spar caps that requires replacement of the wing front lower spar caps when the life limit is reached. This AD also changes the requirements and applicability of the groups discussed above and removes the ultrasonic inspection method. We are issuing this AD to prevent wing front lower spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing in flight.

DATES: This AD becomes effective on February 24, 2010.

On February 24, 2010, the Director of the Federal Register approved the incorporation by reference of Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007, listed in this AD.

As of May 20, 2003 (68 FR 15653), the Director of the Federal Register approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, listed in this AD.

As of July 25, 2000 (65 FR 36055), the Director of the Federal Register approved the incorporation by reference of Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; and Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997, listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Thrush Aircraft, Inc., 300 Old Pretoria Road, P.O. Box 3149, Albany, Georgia 31706–3149. The service

information is also available on the Internet at *http://www.thrushaircraft.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2007–27862; Directorate Identifier 2007–CE–036–AD.

FOR FURTHER INFORMATION CONTACT:

—Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5524; *facsimile:* (404) 474–5606; *e-mail: cindy.lorenzen@faa.gov;* or

—William O. Herderich, Aerospace Engineer, ACE–117A, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5547; *facsimile:* (404) 474–5606; *e-mail: william.o.herderich@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 27, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Thrush Aircraft, Inc. Model 600 S2D and S2R (S–2R) series airplanes (type certificate previously held by Quality Aerospace, Inc. and Ayres Corporation). This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 4, 2009 (74 FR 20431). The NPRM proposed to supersede AD 2006–07–15, Amendment 39–14542 (71 FR 19788, April 17, 2006) with a new AD that would:

- Retain the actions of AD 2006–07–15;
- Add life limits for the wing front lower spar caps;
- Lower the initial and repetitive inspection times for Group 5 airplanes;
- Correct some airplane Group classifications;
- Add an airplane to the Applicability section; and
- Remove the use of ultrasonic inspection methods.

For replacement of the wing front lower spar caps, the initial compliance time for all airplanes will be at least an additional 500 hours time-in-service (TIS) after the effective date of this AD. Calculated from actual flight hour data from 285 S2R series airplanes, 500 hours TIS equates to the average yearly operational time. The compliance schedules should give owner/operators enough time to schedule the replacement of the wing front lower spar caps.

Although not required in this AD, we recommend installing "big butterfly" and lower splice plates, P/N 20211–09 and P/N 20211–11, or Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, since they increase the strength of the wing beyond the minimum safety standards.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Extend Compliance Time To Replace the Spar Caps

Marc Fries states that a large portion of the affected airplanes will need to address a spar replacement within a very short period of time, overwhelming a limited number of repair facilities. Mr. Fries also states that most operators have a short "down time" during their season in which to do this type of repair, and many operators will run out of flying hours before a repair facility can do the work or even get the kits from the factory.

Mr. Fries requests an extension of the compliance time because there are a limited number of repair facilities, and the replacement parts may not be available immediately. Mr. Fries also requests to insert into the AD an allowance for an extension of the compliance time while continuing the spar cap inspections.

We do not agree with the commenter. As stated in the NPRM, allowance for the compliance time based on the limited number of repair facilities and the limited availability of replacement parts has already been made. For airplanes that have already exceeded the life limit replacement time for the wing front lower spar caps, the minimum compliance time for those with the highest hours TIS, which are the airplanes with the highest risk of spar cap failure, is 500 hours TIS. Five hundred hours TIS equates to an average year of operation for these airplanes. Airplanes that have exceeded the life limit replacement time, but are not at the highest level of risk, will be allowed an even longer compliance time of 1,000 hours TIS, 1,500 hours TIS, or 2,000 hours TIS based on the current number of hours TIS on the wing front lower spar caps. Airplanes that have not yet reached the life limit replacement time are allowed a minimum of 2,000 hours TIS to comply with the AD. These compliance times result in an average operator having at least one year to comply with the AD; however, most operators will have much longer than one year to replace the wing front lower spar caps. These graduated compliance times should allow enough time for adequate supply of parts and repair facility availability.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Withdraw the AD

Charles Brumley states that the pilot should be allowed to make his own decision whether a new spar cap is needed and requests an alternative to this AD.

Mr. Brumley further states that he believes the AD is unnecessary for the following reasons:

- If the pilot is involved in the maintenance of the airplane, then the pilot can make an informed decision about whether or not to install a new spar cap and whether or not the aircraft is in a condition for safe operation;
- The AD will cause undue economic hardship on the airplane operators and the farms that use aerial application services;
- There have only been a few cracks found, *i.e.,* that there is not enough service history to support issuance of an AD; and
- The large butterfly plates are adequate to ensure safety of the pilot until a spar cap crack is found.

We infer this as a request for the FAA to withdraw the AD.

We do not agree with the commenter. While the commenter may have maintained his airplane adequately, the formation of fatigue cracks mainly relates to the airplane's design and operation. Replacement of the wing front lower spar caps when they have reached their life limits is currently the only means known to the FAA to address the unsafe condition.

We have extensive crack data that currently shows 176 wings on 123 airplanes had cracks in the wing front lower spar caps. As the incidences of cracking increase, which has occurred in the Thrush airplanes, the chance of an existing crack not being detected during an inspection increases. Airplanes with cracks in the wing front lower spar caps are unable to meet ultimate strength requirements, which could lead to a wing failure. The only known way of mitigating this risk is to replace the wing front lower spar caps.

There are already procedures in place for owner/operators to request an alternative to any AD. Use the alternative method of compliance (AMOC) procedures provided in this AD

to request an AMOC. The request for an AMOC must include any substantiating information, such as stress and fatigue data. The AMOC will be approved if we find it provides an acceptable level of safety.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 3: Adjusted Life Limits Based on Environmental Conditions

Avenger Aircraft and Services (Avenger) states the life limits for the wing front lower spar caps should be adjusted if environmental conditions were not taken into account when determining the life limits. The commenter states that metal fatigue is influenced by environmental conditions.

We do not agree with the commenter's request to adjust the life limits. We did take environmental conditions into consideration during our analysis for determining the life limits. The risk-based analysis used by the FAA used actual reported crack data from in-service airplanes. These in-service data came from airplanes operated in a variety of environments; therefore, the raw data used in the FAA's analysis include the effects caused by environmental conditions.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 4: Adjust Life Limits Based on Crack Sizes

Avenger states that the life limit of the wing front lower spar cap could be much shorter if crack sizes are taken into account during the risk assessment. Avenger also states that this can be particularly significant when some fleet crack sizes may have exceeded the critical size without failing due to the airplane not exceeding limit load at that particular time.

We do not agree with the commenter's request. Although we did not include the crack size in our analysis, we did use a statistical approach and took into account the TIS on the wing front lower spar cap when the crack was found and reported to the FAA. There are other factors in place in the AD to mitigate the risk associated with not using crack size to determine the life limit of the wing front lower spar caps. We determined a life limit for continued operational safety of the S2R fleet and did not propose a life limit as defined in FAA guidance for type certification of newly certificated airplanes. Our analysis of the crack data, which includes allowances for both the statistically significant amount of crack data on the Thrush fleet and the existence of an inspection program for the wing front lower spar caps, yielded the life limits times for the wing front lower spar caps shown in the NPRM.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 5: Remove Magnetic Particle Inspection Method

Avenger states that the flaw size that can be detected by the magnetic particle inspection method is 0.69 inches, which is in excess of the flaw size that would allow the wing front lower spar cap to continue to carry limit load.

Avenger states, therefore, magnetic particle inspections should not be utilized as a valid inspection method and should be removed from the AD.

We do not agree with the commenter. The magnetic particle inspection interval was originally set at 500 hours TIS by AD 2000–11–16 and was based on crack growth analysis provided by Ayres Corporation (Ayres). We accepted Ayres' proposed usage of U.S. Air Force data from Report AFWAL 3–5–852, which showed a reliably detectable crack size (90 percent probability/95 percent confidence) of 0.12 inch when using magnetic particle inspection methods. Using this detectable crack size with a repetitive inspection of 500 hours TIS allowed for at least two inspections to occur after crack initiation and prior to a crack reaching its critical size. As the fleet aged and as more cracks occurred in-service, the risk to the fleet increased. To help mitigate this risk, we doubled the frequency of the inspections required in AD 2006–07–15. In this AD we are requiring inspections every 250 hours TIS, which allows for four chances of detecting a crack based on the data originally used by Ayres. This same 250-hour TIS inspection interval, along with imposing a wing front lower spar cap life limit to further mitigate risk, was included in the proposed AD. The detectable crack size of 0.12 inch used by Ayres is very near the values of detectable size currently suggested for use by the FAA (Ref. Website sponsored by the FAA in conjunction with Iowa State University *http://www.cnde.iastate.edu/faa-casr/engineers/index.html*) of 0.13 to 0.15 inch. With the added conservatism of four inspections to detect cracks before reaching a critical crack size, when two inspections are what is normally required in a more ideal environment, the inspection interval in this AD is well within the current guidelines.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 6: Require Calibration Standards and Level 2 NDT Personnel To Perform Eddy Current Inspections

Avenger states that calibration standards and Level 2 Non-destructive Testing (NDT) personnel are necessary to achieve reliability and repeatability in the inspections. These calibration standards are designed to replicate the structure being inspected with simulated flaws and are used every time as a setup tool by the inspector prior to conducting the on-aircraft inspection. Utilization of these standards is the current practice by all major aircraft manufacturers and should be required for the Thrush inspections in order to ensure a 90 percent probability of detection. In addition, the inspectors should be fully certified Level 2 NDT personnel with bolt hole eddy current qualifications.

We do not agree with the commenter's request that a change is needed to the AD. This AD and the ADs that this AD supersedes allow for eddy current inspection procedures to be approved only through the FAA's Aircraft Certification Office (ACO). The FAA ACO already requires each procedure to have the correct type of calibration standard as this is a basic requirement for ensuring a good inspection. The FAA ACO has not and will not approve an eddy current inspection procedure that does not include a requirement to use only Level 2, or even more qualified Level 3, certified NDT inspectors for these eddy current inspections.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 7: Allow Installing Supplemental Type Certificate (STC) SA03654AT as a Terminating Action in This AD

Avenger states that a solution that was not available at the time the proposed AD was written is now currently on the market. Avenger requests that the following information be included in the AD. This solution is the Avenger STC SA03654AT Avenger Extended Performance Front Spar Enhancement Kit.

STC SA03654AT installs FAA-approved replacement wing front lower spar caps for all airplanes that are the subject of this AD, except for Model S2D airplanes. The replacement spars have a life limit of 40,000 hours TIS with a parts cost of $40,000 and an installation cost of $25,500.

Avenger's FAA STC replacement kit includes the following:

- 2 lower wing front lower spar caps (made from stainless steel, not 4000 series steel);

- 2 front spar web doublers;
- 1 large butterfly plate (redesigned);
- 2 larger splice blocks (redesigned); and
- All associated hardware for installation.

Avenger requests that the AD be amended to include the installation of the Avenger Extended Performance (AXP) kit as a terminating action to this AD.

We agree with the commenter. The replacement wing front lower spar caps and other modification parts that are approved by STC SA03654AT, Installation of Avenger Extended Performance Front Spar Enhancement Kit (new wing front spar lower caps, center splice and doublers), in accordance with Part II of Avenger Master Data List AAS–MDL–08–001, Revision B, dated November 26, 2008, or later FAA-approved revision, are a viable terminating action to this AD. The installation of STC SA03654AT is an alternative to replacing the wing front lower spar caps with Ayres/Thrush wing front lower spar caps.

We will change the final rule AD action to allow installing STC SA03654AT as a terminating action for this AD.

Comment Issue No. 8: Require Reaming Bolt Hole Before Cold Working

Avenger states it is their opinion that the cold working process accomplished as part of the Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996, is not being conducted correctly, and fatigue damage is being introduced and made more critical than if cold working was not accomplished at all. In order to utilize mandrel expansion in a safe manner, the hole in question must first be reamed to remove any corrosion or existing cracks that are too small to be detected. This "insurance cut" is required to remove any anomaly in the hole that may cause an issue during the cold working process.

Avenger requests the AD be amended to explicitly state that prior to mandrel expansion, an insurance ream, capable of cleaning up a .03 inch undetected crack followed by a bolt hole eddy current inspection using a calibration standard, be accomplished prior to the mandrel expansion process.

We do not agree with the commenter. The AD already requires using the cold working procedure found in Ayres Service Bulletin SB–AG–39, dated September 17, 1996. Steps 7 and 8 in the Rework section of this service bulletin require the bolt holes to be reamed before cold working of the holes. These procedures must be accomplished in order to be in compliance with this AD.

We are not changing the final rule AD based on this comment.

Comment Issue No. 9: Require Installing Big Butterfly Plates

Michael Morris and Mr. Brumley state that instead of mandating the replacement of the wing lower spar caps, they would like the FAA to require installing big butterfly plates. In addition to installing the big butterfly plates, Mr. Morris also requests to keep the current inspection intervals for magnetic particle and eddy current inspections, and add a visual inspection every 100 hours TIS.

Mr. Morris states that he believes replacing the spar cap is unnecessary for the following reasons:

- The inspection program will continue to work;
- The economic impact is too great; and
- Some operators do not fly as aggressively as others and should not be penalized for the actions of the other pilots.

We do not agree with the commenters. The "big butterfly" plate does not have enough strength to carry all of the possible flight loads in the event the wing spar cap is severed. This plate cannot be solely relied upon to ensure the safety of the airplane.

Even if the spar cap is not completely severed but has a crack that is large enough to see when performing the commenter's proposed 100-hour TIS visual inspection, the remaining strength in the wing spar joint is not enough to carry all of the possible flight loads. As explained in the proposed AD, inspection reliability for any type of inspection method is not 100 percent; therefore, over time the probability of an inspection failing to detect a crack increases and something more needs to be done to ensure the safety of the airplanes.

As shown in the Initial Regulatory Flexibility Analysis section of the proposed AD, the economic impact was extensively studied. While we agree the AD will have a significant economic impact on small businesses, the only known way to ensure the safety of the airplane is to replace the wing front lower spar caps.

We also agree that there are many variables affecting the life limit of the wing front lower spar caps, including the operating weights and operating G loads. Higher weights and higher G loads reduce the life limit of the wing front lower spar caps. The only way to consider giving credit to those who operate at lower weights and lower G loads would be if each individual airplane had recorded data for every flight since the wings were installed showing the weights and G loads. Each individual airplane owner would then need to have fatigue analysis and tests done by a qualified engineer to determine the life limit for that particular set of wings based on that recorded data. The expense of conducting this type of study for each airplane may be higher than the cost of replacement wing front lower spar caps; therefore, it may not be an economically viable alternative.

We are not changing the final rule AD action based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes previously discussed and minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD will affect 808 airplanes in the U.S. registry, including those airplanes affected by AD 2006–07–15.

We estimate the following costs to do each inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 work-hours × $80 = $240	$525	$765	$618,120

We estimate the following costs to do cold work of bolt holes for the repair that may be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × $80 = $80	$100	$180

We estimate the following costs to do any reaming of outer holes to 5/16-inch diameter for the repair that may be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × $80 = $80	None	$80

We estimate the following costs to do any drilling and reaming of outer holes and adding three holes to install a Kaplan splice block for the repair that may be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
65 work-hours × $80 = $5,200	$4,400 for splice block and $600 for hardware	$10,200

We estimate the following costs to do any necessary wing front lower spar cap replacement with the optional Ayres or Thrush part numbers (P/Ns) 20207–1, 20207–2, 20207–11, 20207–12, 20207–13, 20207–14, 20207–15, or 20207–16 that will be required based on the results of the inspection or by the wing front lower spar cap reaching the life limit:

Labor cost per wing front lower spar cap	Parts cost per wing front lower spar cap	Total cost per airplane
200 work-hours × $80 = $16,000	$8,000	Each spar cap replacement = $24,000 Two wing front lower spar caps per airplane = $48,000.

However, the supply of individual wing front lower spar caps (new or used) is very limited.

We estimate the following costs to do the optional installation of Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007. This kit may be used to do any necessary wing front lower spar cap replacements that will be required based on the results of the inspection or that will be required based on reaching the life limit:

Labor cost	Parts cost	Total cost per airplane
300 work-hours × $80 = $24,000	$40,000	$64,000

We estimate the following costs to do the optional installation of Avenger Aircraft and Services STC SA03654AT for Avenger Extended Performance Front Spar Enhancement Kit. This kit may be used to do any necessary wing front lower spar cap replacements that will be required based on the results of the inspection or that will be required based on reaching the life limit:

Labor cost	Parts cost	Total cost per airplane
319 work-hours × $80 = $25,520	$40,000	$65,500

The FAA estimates that 501 airplanes affected by this AD will retire before their wing front lower spar cap life limits are reached.

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 AD.

Final Regulatory Flexibility Analysis

Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are seriously considered. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

We determined that this final rule will have a significant economic impact on a substantial number of small entities and, accordingly, as required by section 603(a) of the RFA, we prepared and published an initial regulatory flexibility analysis (IRFA) as part of the NPRM for this final rule (74 FR 20431, May 4, 2009). Section 604 of the RFA also requires an agency to publish a final regulatory flexibility analysis (FRFA) in the **Federal Register** when issuing a final rule. Section 604(a) requires that each FRFA contain:

- A succinct statement of the need for, and objectives of, the final rule;
- A summary of the significant issues raised by the public comments in response to the IRFA, a summary of agency's assessment of such issues, and a statement of any changes made to the proposed final rule resulting from such comments;
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statues, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the final rule considered by the agency that affect the impact on small entities was rejected.
- A description of and an estimate of the number of small entities for which the final rule will apply; and
- A description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Need for, and Objectives of Final Rule

A series of ADs, beginning in 1997 and culminating in AD 2006–07–15 in 2006, addressed the issue of fatigue cracking of the wing front lower spar caps in Thrush Aircraft, Inc. Model 600 S2D and S2R (S–2R) series airplanes (type certificate previously held by Quality Aerospace, Inc. and Ayres Corporation). This type of fatigue cracking, if not addressed, could result in catastrophic wing failure. The original 1997 AD was issued after an accident on an S2R series airplane in which the wing separated from the airplane in flight. Requirements of inspection and possible replacement were changed in 2000 to repetitive inspections and possible replacement. In 2006, the inspection rate was doubled after a completely severed wing front lower spar cap was found on one of the affected airplanes and the FAA noted that it was working with Thrush Aircraft, Inc. to develop a future terminating action. Analysis indicated that an undetected crack had existed during the previous two repetitive inspections of that wing front lower spar cap.

Subsequent FAA analysis has shown that wing front lower spar cap fatigue cracking has increased as the fleet has aged and will continue to increase. Consequently, the incidences of undetected cracks will increase, increasing the probability of catastrophic wing failure. The FAA has concluded that repetitive inspections, as required since the 2000 AD, are insufficient by themselves to ensure the safety of these airplanes and, accordingly, in this final rule the FAA is requiring wing front lower spar cap life limits to address this safety issue.

Summary of Significant Issues Raised by the Public in Response to the IRFA, Summary of FAA's Assessment of Such Issues, Statement of Changes Made to the Final Rule as a Result of Such Issues, Description of the Steps the Agency Has Taken To Minimize a Significant Economic Impact on Small Entities, and Why Other Significant Alternatives to the Final Rule That Affect Small Entities Were Rejected

There were no public comments to the IRFA, but there were public comments to the proposed rule, which have relevance for small and large entities alike.

As noted in the preamble to the final rule, Avenger commented that it has developed a wing front lower spar replacement kit, which was not available when the proposed rule was issued. The FAA has approved their kit for a 40,000-hour TIS life limit. Avenger requested that the FAA approve the installation of its kit as a terminating action to the AD. As noted in the preamble, the FAA agrees with Avenger that installation of its kit is a viable terminating action to this AD. Accordingly, it is an alternative to replacing the wing front lower spar caps with Ayres/Thrush spar caps; and the FAA has incorporated this change in the final rule. This is a significant issue because the Ayres/Thrush kit, although priced slightly lower than the Avenger kit, has a lower life limit (ranging from 5,400 to 28,800 hours TIS.) Many of the affected airplanes with the Ayres/Thrush kit installed will require multiple replacements over their lifetimes and installation of the Ayres/Thrush kit does not eliminate the requirement of repetitive inspections and reporting requirements. Consequently, the estimated cost of the final rule is lower given the availability of the Avenger kit as a terminating action. In the cost analysis for the proposed rule, we estimated the total cost to be $37.1 million. In the final rule, we estimate total cost to be $20.1 million.[1]

As an alternative to replacing the wing front lower spar caps, two commenters suggested that the FAA require installation of "big butterfly" plates. But, as the FAA noted in the preamble, the "big butterfly plate" does not have enough strength to carry all the

[1] Individual replacement of the two original equipment spars is cheaper (for one installation) than installing the Ayres/Thrush kit or the Avenger kit, but as noted in the "Cost of Compliance" section, the supply of these spar caps is very limited. Accordingly, total cost is overestimated, but only slightly, by our assumption that all operators would comply by installing a kit (NPRM: Ayres/Thrush kit, final rule: Avenger kit).

possible flight loads if the wing front lower spar caps were severed. Accordingly, this plate cannot be solely relied upon to ensure the safety of the airplane and is not an acceptable alternative method of compliance to replacing the wing front lower spar caps.

Additionally, one commenter suggested 100-hour TIS visual inspections. As discussed in the preamble, even if the wing front lower spar cap is not completely severed, but has a crack that is large enough to see when performing the 100-hour TIS visual inspection, the remaining strength in the wing spar joint is not enough to carry all possible flight loads. Therefore, the 100-hour TIS visual inspection alone is not a sufficient alternative method of compliance.

The FAA believes there are currently no other available alternative methods of compliance to the final rule that will allow the safety objectives of the final rule to be achieved. The FAA, however, has allowed a generous compliance period that will significantly reduce the economic impact on small and large entities alike. As already noted in the preamble, airplanes that have already exceeded the life limit on their wing front lower spar caps are allowed 500, 1,000, 1,500, or 2,000 hours TIS to comply with the final rule, depending on the current number of accumulated hours TIS. Since the average usage rate for the affected airplanes is about 500 hours TIS per year, these allowances are equivalent, on average, to 1, 2, 3, and 4 years to comply with the final rule. Airplanes that have not yet reached their wing front lower spar cap life limit are allowed a minimum of 2,000 hours TIS or, on average, 4 years to comply with the final rule.

For a complete summary of public comments and the FAA's responses, please *see* the Comments section in the preamble above.

A Description of and an Estimate of the Number of Small Entities for Which the Final Rule Will Apply

This final rule will affect 808 U.S.-registered and -operated Thrush Aircraft, Inc. Model 600S2D and S2R (S–2R) series airplanes. [2] In conducting this analysis, the FAA reviewed data from the FAA Registry to ascertain how many Thrush Aircraft, Inc. were registered and operated by small entities. The FAA Registry indicates that these 808 airplanes are owned by 546 separate entities in agricultural aviation. All but one of these entities are small entities as defined by the Small Business Administration (SBA). Although the FAA Registry does not record financial or business data about the registered owners of aircraft, and such data for these entities are not readily available elsewhere, it appears that most, if not all, of the 546 entities are engaged in crop dusting, spraying, and seeding operations. These activities are classified in North American Industry Classification System (NAICS) industry, NAICS 115112—Soil Preparation, Planting, and Cultivating (including Crop Dusting, Crop Spraying). The concentration of these entities in a single NAICS industry reflects the specialized nature of agricultural airplanes with restricted airworthiness certificates. Furthermore, several of these entities were classified in the Standard Industrial Classification (SIC) equivalent of NAICS 115112 by *http://www.manta.com.* Although a few of these entities may also be engaged in firefighting, which is classified in NAICS 115310—Support Activities for Forestry (including Forest Fire Suppression), the FAA is unable to identify any of these entities as being principally engaged in firefighting. The SBA small business classification for NAICS 115112 is a maximum of $6.5 million in business receipts, and for NAICS 115310 it is a maximum of $16.5 million in business receipts. Only one entity in this sample appears to have business receipts over $6.5 million, and no entity has business receipts in excess of $16.5 million. Using the total number of airplanes owned as a size criterion, the FAA selected a sample of 41 of the largest affected entities and found median sales shown by *http://www.manta.com* to be just $250,000 annually. Firms in agricultural aviation appear to be inherently of small size. Accordingly, the FAA estimates that 545 small entities will be affected by this final rule.

Reporting, Record Keeping, and Other Compliance Requirements

Small entities will incur no new reporting and record-keeping requirements as a result of this final rule. In fact, such requirements, for small and large firms alike, will be greatly reduced since installation of the Avenger kit has been incorporated as an alternative terminating action to this final rule.

This final rule will affect U.S. operators of Thrush Aircraft, Inc. Model 600S2D and S2R (S–2R) series agricultural airplanes airplanes. The affected airplanes were produced by Thrush Aircraft, Inc. predecessor firms over the period 1965–2000. This final rule largely retains the requirements of superseded AD 2006–07–15 to inspect/repair/replace the currently installed Ayres/Thrush wing front lower spar caps. The new requirements set life limits on the Ayres/Thrush wing front lower spar caps and requires replacing of these wing front lower spar caps when the life limits are reached.

Economic Impact on Small Entities

Replacing the wing front lower spar caps is expensive and, consequently, as we show below, the final rule will have a significant economic impact on the substantial number of small firms we identified above.

The total compliance cost (undiscounted) is $65,520 for an affected airplane for which the wing front lower spar caps are replaced before retirement, or zero for an affected airplane that will retire before its compliance date. Individual airplane compliance costs will result in costs to the small entities that own these airplanes and will vary depending on the number of affected airplanes owned by the entity. The ownership table below shows the variation in the number of owners with particular numbers of airplanes. The table shows that almost 75 percent of the 546 individual owners have only one affected airplane, and more than 90 percent of owners have no more than two affected airplanes. The average (mean) number of affected airplanes held is 1.48, while the median number held is just 1.00, so the median airplane cost is equivalent to the median owner cost.

[2] FAA Registry, *http://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/releasable_aircraft_download/.* Data downloaded on 4/14/08.

NUMBER OF THRUSH AIRCRAFT, INC. OWNERS HAVING PARTICULAR NUMBERS OF AFFECTED AIRPLANES

	Number of affected airplanes held by single owner	Number of owners	Cumulative %
	1	406	74.4
	2	86	90.1
	3	26	94.9
	4	13	97.3
	5	7	98.5
	6	2	98.9
	7	2	99.3
	8	1	99.5
	9	2	99.8
	13	1	100.0
Total		546	
Mean	1.48		
Median	1.00		

Source: FAA Registry. Data downloaded on 4/18/08.

In the "Cost of Compliance" section of this final rule, we estimate total cost (undiscounted) to be $20.1 million and the present value cost to be $18.2 million. As noted above, the FAA estimates that 545 of the 546 affected by this final rule are small firms, and, in fact, 99.7 percent of the final rule's estimated cost is attributed to small entities. The following document analyzes the impact of this cost on the substantial number of small firms identified above.

Because the FAA Registry does not collect financial or business data on these entities, and such data are not readily available elsewhere, the FAA also used Census Bureau size distribution data to assess the economic impact on small firms. The FAA used data from the 2002 Census since this is the latest census for which size distribution by business receipts is readily available. These data are available in a special census compilation for the SBA.[3] The FAA used the data for NAICS 115112—Soil Preparation, Planting, and Cultivating (including Crop Dusting, Crop Spraying), but did not use the data for NAICS 115310—Support Activities for Forestry (including Forest Fire Suppression) since, as noted above, a very high percentage of the affected small firms, if not all, meet the classification standard of NAICS 115112. Moreover, the size distribution of NAICS 115310 appears to be similar to that of NAICS 115112. The concentration of the affected airplanes in one NAICS industry, noted above, makes the use of census data feasible and appropriate.

The relevant census data are provided in the table below:

2002 CENSUS DATA FOR NAICS 115112—SOIL PREPARATION, PLANTING, AND CULTIVATING (INCL. CROP DUSTING, CROP SPRAYING)—SMALL SIZE CLASSES

Measure	Total	$0–100 thousand	$100–500 thousand	$500 thousand–1 million	$1–5 million	$5–10 million
Firms	2336	509	992	412	394	29
Percentage of firms		21.8%	42.5%	17.6%	16.9%	1.2%
Upper bound percentile		21.8%	64.3%	81.9%	98.8%	100.0%
Est. Receipts ($000)	$1,531,004	$25,681	$257,447	$286,462	$772,401	$189,013
Receipts/Firm ($)	$655,396	$50,454	$259,523	$695,296	$1,960,409	$6,517,690

Source: "Firms" and "Est. Receipts" from Small Business Administration, Office of Advocacy. *http://www.sba.gov/advo/research/us_rec02.txt.*

The table above shows the number of firms and business receipt data for the five smallest size classes of NAICS 115112 that encompass the size range of the firms affected by this final rule. In the "Percentage of firms" row, for each size class, the FAA calculates that class's number of firms as a percentage of the total number of firms in the five size classes. Cumulating this percentage from the smallest to largest size class establishes the "Upper bound percentile"—the cumulated percentage of firms of business receipt size ranging up to the upper bound of the size class. The final rule's cost for the firms at the upper bound percentiles is then estimated as the corresponding percentiles in the estimated firm-level compliance cost data. In order to assess the economic impact of the final rule, these costs are calculated as a percentage of the census data upper bounds.

For example, the upper bound percentile for the $100–500 thousand size class is 64.3 percent, so we estimate the NAICS 115112 firms at that percentile to have business receipts of $500,000. As shown in the table below, the FAA then determined the estimated compliance cost of firms at the same percentile in the compliance cost data to be $57,584. The FAA assumes these firms are the same, so the percentage cost impact (AD Cost/Firm Size) is 11.5 percent. This procedure assumes the size distribution of the 808 firms affected by the final rule has a

[3] Small Business Administration, Office of Advocacy. *http://www.sba.gov/advo/research/us_rec02.txt.*

distribution similar to the overall distribution of the small firms in NAICS 115112. It also assumes there is a perfect rank correlation between the size of the affected firms and the firms' present value compliance cost. While the latter assumption is certainly not the case, any deviation from such perfect correlation can only increase the impact of the final rule because smaller firms will have larger costs. Accordingly, the FAA's determination that the final rule will have a significant impact on a substantial number of small entities is unaffected.

ECONOMIC IMPACT OF AD ON SMALL FIRMS

AD cost to firm	Firm percentile	Estimated firm size (Census Bureau's receipts upper bound)	AD cost/firm size	Cumulative number of firms
$0	21.8 percentile	$100,000	0.0%	119.2
$57,584	64.3 percentile	$500,000	11.5%	351.5
$63,220	81.9 percentile	$1,000,000	6.3%	447.9
$203,502	98.8 percentile	$5,000,000	4.1%	540.2

The table above shows a zero-cost impact on a firm at the 21.8 percentile. This result reflects the estimate in the FRFA cost analysis (*see* docket) that more than 500 older airplanes will retire before their wing front lower spar cap life limits are reached. As already mentioned, the AD cost for a firm at the 64.3 percentile is $61,754, which as a percentage of estimated firm size (size class upper bound) is 11.5 percent of annual business receipts. This impact declines to 6.3 percent for a firm at the 81.9 percentile and to 4.1 percent for a firm at the 98.8 percentile. The overall pattern is zero impact for the smallest of the small firms owners of the oldest airplanes, but a highly positive impact for the medium-sized small firms. In percentage terms, this impact falls for the largest small firms, but remains at a substantial level. While the FAA can make no definitive inference on the impact of the final rule on firms between the 21.8 and 64.3 percentiles, the FAA notes the cost varies from 6.3 percent up to 11.5 percent of annual business receipts for 96 firms between the 81.9 and 64.3 percentiles and from 4.1 percent to 6.3 percent of annual business receipts for 92 firms between the 98.8 and 81.9 percentiles. These estimated percentage impacts are substantial. Therefore, the FAA concludes that this final rule will have a significant impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The statute does not consider legitimate domestic objectives, such as safety, as unnecessary. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA is issuing this final rule because of a known safety problem. Therefore, this final rule AD action applies only to U.S. registered airplanes and is not considered an unnecessary obstacle to international trade.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments in the aggregate, or by the private sector. The Act deems such a mandate to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million. This rule does not contain such a mandate.

Regulatory Findings

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

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

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

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

3. Will have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2007–27862; Directorate Identifier 2007–CE–036–AD" in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–07–15, Amendment 39–14542 (71 FR 16691, April 4, 2006), and adding the following new AD:

2009–26–11 Thrush Aircraft, Inc. (Type Certificate Previously Held by Quality Aerospace, Inc. and Ayres Corporation): Amendment 39–16150; Docket No. FAA–2007–27862; Directorate Identifier 2007–CE–036–AD.

Effective Date

(a) This AD becomes effective on February 24, 2010.

Affected ADs

(b) The following lists a history of the ADs affected by this AD action:

(1) This AD supersedes AD 2006–07–15, Amendment 39–14542;

(2) AD 2006–07–15 superseded AD 2003–07–01, Amendment 39–13097;

(3) AD 2003–07–01 superseded AD 2000–11–16, Amendment 39–11764;

(4) AD 2000–11–16 superseded AD 97–17–03, Amendment 39–10195; and

(5) AD 97–17–03 superseded AD 97–13–11, Amendment 39–10071.

Applicability

(c) This AD affects the following airplane models and serial numbers (S/Ns) in Table 1 that are certificated in any category when wing front lower spar cap part numbers (P/Ns) 20207–1, 20207–2, 20207–11, 20207–12, 20207–13, 20207–14, 20207–15, or 20207–16 are installed. This AD applies to the S/Ns in Table 1 with or without a "DC" suffix. This AD does not affect airplanes with any other wing front lower spar cap part number, *e.g.* Thrush P/N 22507 (any dash number) or Supplemental Type Certificate (STC) SA03654AT parts. The table also identifies the group that each airplane belongs in when determining inspection compliance times and life limit times for the parts:

TABLE 1—APPLICABILITY AND AIRPLANE GROUPS

Model	S/Ns	Group
(1) S–2R	5000R through 5100R, except 5010R, 5031R, 5038R, 5047R, and 5085R	1
(2) S2R–G1	G1–101 through G1–106	1
(3) S2R–R1820	R1820–001 through R1820–035	1
(4) S2R–T15	T15–001 through T15–033 (also *see* paragraph (d) of this AD)	1
(5) S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–171, T34-180, and T34–181 (also *see* paragraph (e) of this AD)	1
(6) S2R–G10	G10–101 through G10–138, G10–140, and G10–141	2
(7) S2R–G5	G5–101 through G5–105	2
(8) S2R–G6	G6–101 through G6–147	2
(9) S2RHG–T65	T65–002 through T65–018	2
(10) S2R–R1820	R1820–036	2
(11) S2R–T34	T34–144, T34–146 through T34–170, T34–172 through T34–179, and T34–189 through T34–234 (also *see* paragraph (e) of this AD).	2
(12) S2R–T45	T45–001 through T45–014	2
(13) S2R–T65	T65–001 through T65–018	2
(14) 600 S2D	All serial numbers beginning with 600–1311D	3
(15) S–2R	1380R, 1416R through 2592R, 3000R, and 3002R	3
(16) S2R–R1340	R1340–001 through R1340–035	3
(17) S2R–R3S	R3S–001 through R3S–011	3
(18) S2R–T11	T11–001 through T11–005	3
(19) S2R–G1	G1–107 through G1–115	5
(20) S2R–G10	G10–139, G10–142 through G10–165	5
(21) S2R–G6	G6–148 through G6–155	5
(22) S2RHG–T34	T34HG–102	5
(23) S2R–T15	T15–034 through T15–040 (also *see* paragraph (d) of this AD)	5
(24) S2R–T34	T34–236 through T34–270 (also *see* paragraph (e) of this AD)	5
(25) S2R–T45	T45–015	5
(26) S–2R	5010R, 5031R, 5038R, 5047R, and 5085R	6

(d) The S/Ns of Model S2R–T15 airplanes could incorporate T15-xxx and T27-xxx (xxx is the variable for any of the S/Ns beginning with T15- and T27-). This AD applies to both of these S/N designations as they are both Model S2R–T15 airplanes.

(e) The S/Ns of Model S2R–T34 airplanes could incorporate T34-xxx, T36-xxx, T41-xxx, or T42-xxx (xxx is the variable for any of the S/Ns beginning with T34-, T36-, T41-, and T42-). This AD applies to all of these S/N designations as they are all Model S2R–T34 airplanes.

(f) Any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or a gas turbine engine greater than 600 horsepower, is a Group 1 airplane for the purposes of this AD. Inspect the airplane at the Group 1 compliance time specified in this AD. Replace the wing front lower spar caps in accordance with the formulas given in paragraph (k) of this AD.

(g) Group 6 airplanes were originally manufactured with higher horsepower radial engines, but were converted to lower horsepower radial engines. They are now configured identically to Group 3 airplanes.

Unsafe Condition

(h) This AD is the result of the analysis of data from 117 wing front lower spar cap fatigue cracks found on similar design Model 600 S2D and S2R (S–2R) series airplanes and the FAA's determination that the replacement of high time wing front lower spar caps is necessary to address the unsafe condition for certain airplanes. Since we issued AD 2006–07–15, analysis reveals that inspections are not detecting all existing cracks, and incidences of undetected cracks are increasing. This AD retains the actions of AD 2006–07–15 and imposes a life limit on the wing front lower spar caps that requires you to replace the wing front lower spar caps when the life limit is reached. This AD also changes the requirements and applicability of the groups discussed above and removes the ultrasonic inspection method. We are issuing this AD to prevent wing front lower spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing.

Compliance

(i) To address the problem, do the following, unless already done:

(1) If you have already done an inspection required by AD 2006–07–15, within the next 30 days after February 24, 2010 (the effective date of this AD), identify the number of hours time-in-service (TIS) since your last inspection required by AD 2006–07–15. You will need this to establish the inspection interval for the next inspection required by this AD.

(2) Inspect the two outboard bolt hole areas (whether ¼-inch and 5/16-inch diameter bolt holes or both 5/16-inch diameter bolt holes) on each wing front lower spar cap for fatigue cracking using magnetic particle or eddy current procedures. If Kaplan splice blocks, P/N 22515–1/–3 or P/N 88–251, are installed following Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, inspect the three outboard bolt hole areas on each wing front lower spar cap for fatigue cracking using magnetic particle or eddy current procedures. Use the compliance times listed in paragraph (i)(3) of this AD for the initial inspection and the compliance time listed in paragraphs (i)(5), (i)(6), or (i)(7) of this AD for the repetitive inspections. The cracks may emanate from the bolt hole on the face of the wing front lower spar cap or they may occur in the shaft of the hole. Inspect both of those areas.

(i) If using the magnetic particle method, inspect using the "Inspection" portion of the "Accomplishment Instructions" and "Lower Splice Fitting Removal and Installation Instructions" in Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996. Do the inspection following FAA Advisory Circular (AC) 43.13–1B, Chapter 5, Section 4, Magnetic Particle Inspection, using the wet particle method. You may obtain a copy of AC 43.13–1B at *http://www.faa.gov/regulations_policies/. Caution:* Firmly support the wings during the inspection to prevent movement of the wing front lower spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the wing front lower spar cap for bolt insertion and prevent damage to the bolt hole. Damage to the bolt hole inner surface or edge of the bolt hole can cause cracks to begin prematurely.

(ii) The inspection must be done by or supervised by a Level 2 or Level 3 inspector certified following the guidelines in FAA AC 65–31A. You may obtain a copy of AC 65–31A at *http://www.faa.gov/regulations_policies/.*

(iii) If using eddy current methods, a procedure must be sent to the FAA, Atlanta Aircraft Certification Office (ACO), for approval before doing the inspection. Send your proposed procedure to the FAA, Atlanta ACO, *Attn:* Cindy Lorenzen, 1701 Columbia Avenue, College Park, Georgia 30337. You are not required to remove the splice block for the eddy current inspections, unless corrosion is visible. Eddy current inspection procedures previously approved under AD 2006–07–15, AD 2003–07–01, AD 2000–11–16, AD 97–13–11, and/or AD 97–17–03 remain valid for this AD.

(iv) If you change the inspection method used (magnetic particle or eddy current), the TIS intervals for repetitive inspections are based on the method used for the last inspection.

(3) If airplanes have not yet reached the threshold for the initial inspection required in AD 2006–07–15, initially inspect following the wing front lower spar cap hours total TIS schedule below or within the next 50 hours TIS after February 24, 2010 (the effective date of this AD), whichever occurs later:

TABLE 2—INITIAL INSPECTION TIMES

Airplane group	Initially inspect upon accumulating the following hours total TIS on the wing front lower spar cap
(i) Group 1	2,000 hours TIS.
(ii) Group 2	1,400 hours TIS.
(iii) Group 3	6,400 hours TIS.
(iv) Group 5	1,000 hours TIS.
(v) Group 6	(A) S/N 5010R: 5,530 hours TIS. (B) S/N 5038R: 5,900 hours TIS. (C) S/N 5031R: 6,400 hours TIS. (D) S/N 5047R: 6,400 hours TIS. (E) S/N 5085R: 6,290 hours TIS.
(vi) Any airplane with the entire Custom Kit CK–AG–41 installed	2,000 hours TIS.

(4) Airplanes in all groups must meet the following conditions before doing the repetitive inspections required in paragraphs (i)(5), (i)(6), or (i)(7) of this AD:

(i) No cracks have been found previously on wing front lower spar cap; or

(ii) Small cracks have been repaired through cold work (or done as an option if never cracked) following Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; or

(iii) Small cracks have been repaired by reaming the ¼-inch bolt hole to 5/16 inches diameter (or done as an option if never cracked) following Ayres Corporation Custom Kit No. CK–AG–29, Part I, dated December 23, 1997; or

(iv) Small cracks have been repaired through previous alternative methods of compliance (AMOC); or

(v) Small cracks have been repaired by installing Kaplan splice blocks, P/N 22515–1/–3 or P/N 88–251 (or done as an option if never cracked) following Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001.

(5) Repetitively inspect Groups 1, 2, 3, and 6 airplanes that do not have "big butterfly" plates and lower splice plates, P/Ns 20211–09 and 20211–11, installed following Ayres Corporation Custom Kit No. CK–AG–29, Part II, dated December 23, 1997; or that do not have "big butterfly" plates and lower splice plates, P/Ns 94418–5 and 94418–7 or P/Ns 94418–13 and 94418–15, installed following Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007; and meet the conditions in paragraph (i)(4) of this AD. Follow the wing front lower spar cap hours TIS compliance schedule below:

TABLE 3—REPETITIVE INSPECTION TIMES FOR AIRPLANE GROUPS 1, 2, 3, AND 6 WITHOUT "BIG BUTTERFLY" PLATES AND LOWER SPLICE PLATES

When airplanes accumulate the following hours TIS on the wing front lower spar cap since the last inspection required in AD 2006-07-15,	Inspect within the following hours TIS after the effective date of this AD,	Inspect thereafter at intervals not to exceed . . .
(i) *Magnetic Particle inspection:*		250 hours TIS.
(A) 350 or more hours TIS	(A) 50 hours TIS.	
(B) 175 through 349 hours TIS	(B) 75 hours TIS.	
(C) Less than 175 hours TIS	(C) upon accumulating 250 hours TIS.	
(ii) *Eddy Current inspection:*		350 hours TIS.
(A) 500 or more hours TIS	(A) 50 hours TIS.	
(B) 275 through 499 hours TIS	(B) 75 hours TIS.	
(C) Less than 275 hours TIS	(C) upon accumulating 350 hours TIS.	

(6) Repetitively inspect Groups 1, 2, 3, 5, and 6 airplanes that have "big butterfly" plates and lower splice plates, P/Ns 20211–09 and 20211–11, installed following Ayres Corporation Custom Kit No. CK–AG–29, Part II, dated December 23, 1997; or that have "big butterfly" plates and lower splice plates, P/Ns 94418–5 and 94418–7, or P/Ns 94418–13 and 94418–15, installed following Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007; and meet the conditions in paragraph (i)(4) of this AD. Follow the wing front lower spar cap hours TIS compliance schedule below:

TABLE 4—REPETITIVE INSPECTIONS TIMES FOR AIRPLANE GROUPS 1, 2, 3, 5, AND 6 WITH "BIG BUTTERFLY" PLATES AND LOWER SPLICE PLATES

When airplanes accumulate the following hours TIS on the wing front lower spar cap since the last inspection required in AD 2006-07-15,	Inspect within the following hours TIS after the effective date of this AD,	Inspect thereafter at intervals not to exceed . . .
(i) *Magnetic particle inspection:*		450 hours TIS.
(A) 650 or more hours TIS	(A) 50 hours TIS.	
(B) 375 through 649 hours TIS	(B) 75 hours TIS.	
(C) Less than 375 hours TIS	(C) upon accumulating 450 hours TIS.	
(ii) *Eddy Current inspection:*		625 hours TIS.
(A) 900 or more hours TIS	(A) 50 hours TIS.	
(B) 550 through 899 hours TIS	(B) 75 hours TIS.	
(C) Less than 550 hours TIS	(C) upon accumulating 625 hours TIS.	

Note 1: Group 5 airplanes had P/Ns 20211–09 and 20211–11 installed at the factory.

(7) Repetitively inspect airplanes that incorporate Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007, in its entirety that meet the conditions in paragraph (i)(4) of this AD. Follow the wing front lower spar cap hours TIS compliance schedule below:

TABLE 5—REPETITIVE INSPECTION TIMES FOR AIRPLANES WITH THRUSH AIRCRAFT, INC. CUSTOM KIT NO. CK–AG–41, REVISION A, INCORPORATED IN ITS ENTIRETY

When using the following inspection methods,	Repetitively inspect at intervals not to exceed . . .
(i) Magnetic particle inspection	900 hours TIS.
(ii) Eddy current inspection	1,250 hours TIS.

(j) Initially replace the wing front lower spar caps, P/Ns 20207–1, 20207–2, 20207–11, 20207–12, 20207–13, 20207–14, 20207–15, or 20207–16, at the times specified in Table 6 of this AD. Repetitively replace thereafter at the life limit times specified in Table 7 of this AD. Do the replacements as specified in paragraph (l)(4) of this AD.

TABLE 6—INITIAL COMPLIANCE TIME FOR WING FRONT LOWER SPAR CAP REPLACEMENT

Total hours TIS on the wing front lower spar cap	Replace the wing front lower spar cap upon accumulating the following hours TIS on the spar cap after the effective date of this AD
(i) Group 1 with a radial engine and more than 15,000 hours TIS	500 hours.
(ii) Group 1 with a radial engine and 12,000 to 15,000 hours TIS	1,000 hours.
(iii) Group 1 with a radial engine and 9,000 to 11,999 hours TIS	1,500 hours.
(iv) Group 1 with a radial engine and 7,400 to 8,999 hours TIS	2,000 hours.
(v) Group 1 with a radial engine and less than 7,400 hours TIS	Use Table 7(xxii).
(vi) Group 1 with a turbine engine and more than 14,000 hours TIS	500 hours.
(vii) Group 1 with a turbine engine and 11,000 to 14,000 hours TIS	1,000 hours.
(viii) Group 1 with a turbine engine and 8,000 to 10,999 hours TIS	1,500 hours.
(ix) Group 1 with a turbine engine and 4,200 to 7,999 hours TIS	2,000 hours.
(x) Group 1 with a turbine engine and less than 4,200 hours TIS	Use Table 7(xxiii).
(xi) Group 2 with more than 9,000 hours TIS	500 hours.
(xii) Group 2 with 6,000 to 9,000 hours TIS	1,000 hours.
(xiii) Group 2 with 3,900 hours to 5,999 hours TIS	1,500 hours.
(xiv) Group 2 with less than 3,900 hours TIS	Use Table 7(xxiv).
(xv) Group 3 and 6 with more than 28,800 hours TIS	500 hours.
(xvi) Group 3 and 6 with 27,800 to 28,799 hours TIS	1,000 hours.
(xvii) Group 3 and 6 with less than 27,800 hours TIS	Use Table 7(xxv).
(xviii) Group 5 with more than 8,000 hours TIS	500 hours.
(xix) Group 5 with 5,000 to 7,999 hours TIS	1,000 hours.
(xx) Group 5 with 2,400 to 4,999 hours TIS	1,500 hours.
(xxi) Group 5 with less than 2,400 hours TIS	Use Table 7(xxvi).

TABLE 7—WING FRONT LOWER SPAR CAP LIFE LIMITS

Airplane group	Replace wing front lower spar cap upon the accumulation of the following hours TIS on the spar cap:
(xxii) Group 1 with a radial engine	9,400 hours TIS.

TABLE 7—WING FRONT LOWER SPAR CAP LIFE LIMITS—Continued

Airplane group	Replace wing front lower spar cap upon the accumulation of the following hours TIS on the spar cap:
(xxiii) Group 1 with a turbine engine	6,200 hours TIS.
(xxiv) Group 2	5,400 hours TIS.
(xxv) Groups 3 and 6	28,800 hours TIS.
(xxvi) Group 5	3,900 hours TIS with original wing front lower spar cap P/N 20207–11 or P/N 20207–12. 5,400 hours TIS after original wing front lower spar cap has been replaced with any P/N 20207-xx wing front lower spar cap.

Note 2: There is evidence of sharp, uneven edges on the spar cap bolt holes that resulted from the manufacturing process in Group 5 airplanes. Once the original wing front lower spar caps are replaced, the life limit increases.

(k) As previously stated in paragraph (f) of this AD, any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or a gas turbine engine greater than 600 horsepower, is a Group 1 airplane for the purposes of this AD. Replace the wing front lower spar caps using the following formulas.

(1) For airplanes that were originally Group 3 airplanes and later modified by installing a piston engine of greater than 600 horsepower and/or a hopper capacity of greater than 410 gallons, calculate the equivalent Group 1 hours TIS on each spar cap as follows:

$$\text{(i) Usage factor} = \frac{\text{Total hrs. on cap pre-mod.}}{28{,}800} + \frac{\text{Additional hrs. on cap post-mod.}}{9{,}400}$$

(ii) Equivalent Group 1 hours TIS = 9,400 × Usage Factor

(2) For airplanes that were originally Group 3 airplanes and later modified by installing a turbine engine of greater than 600 horsepower, with or without installing a hopper with greater than 410 gallon capacity, calculate the equivalent Group 1 hours TIS on each spar cap as follows:

$$\text{(i) Usage factor} = \frac{\text{Total hrs. on cap pre-mod.}}{28{,}800} + \frac{\text{Additional hrs. on cap post-mod.}}{6{,}200}$$

(ii) Equivalent Group 1 hours TIS = 6,200 × Usage Factor

(3) When the equivalent Group 1 hours TIS on the wing front lower spar cap equals the life limit of 9,400 hours TIS if a radial piston engine is installed or reaches 6,200 hours TIS if a turbine engine is installed, the wing front lower spar cap must be replaced. Use Table 6 if over the life limit.

(4) *See* the appendix to this AD for examples of how to calculate the applicable life limit.

(l) If any cracks are found during any inspection required by this AD, you must repair the cracks or replace the wing front lower spar cap before further flight.

(1) Use the cold work process to ream out small cracks as defined in Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996, and deburr the bolt hole edges with the splice blocks removed after cold work is performed; or

(2) If the crack is found in a ¼-inch bolt hole, ream the ¼-inch bolt hole to 5⁄16 inches diameter as defined in Part I of Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997; or

(3) Install Kaplan splice blocks, P/N 22515–1/3 or P/N 88–251, following Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001; or

(4) Replace the affected wing front lower spar cap following an FAA-approved procedure. Contact the FAA at the address in paragraph (t) of this AD to obtain an FAA-approved replacement procedure unless previously provided by the manufacturer at delivery of the airplanes. An alternative to replacing just the affected wing front lower spar cap is to replace both wing front lower spar caps and the surrounding structure following Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007. Another alternative to replacing just the affected wing front lower spar cap is to replace both wing front lower spar caps and the surrounding structure following Avenger Aircraft and Services FAA STC SA03654AT for Avenger Extended Performance Front Spar Enhancement Kit. You may obtain a copy of FAA STC SA03654AT at *http://www.faa.gov/aircraft/air_cert/design_approvals/stc/*. If you chose to install Thrush Custom Kit No. CK–AG–41, the FAA recommends installing Custom Kit No. CK–AG–41, Revision A, in its entirety although this is not mandatory. The additional structure provided in Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007, will provide a greater level of safety than the minimum acceptable level of safety provided by replacing just the wing front lower spar cap. If choosing to install the Avenger FAA STC kit, it is mandatory to install the entire FAA STC kit.

(m) If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued AMOCs with AD 97–17–03 to ream the ¼-inch bolt hole to 5⁄16 inches diameter to remove small cracks. Ayres Corporation Custom Kit No. CK–AG–29, Part I, dated December 23, 1997, also provides procedures to ream the ¼-inch bolt hole to 5⁄16 inches diameter, which may remove a small crack. Resizing the holes to the required size to install a Kaplan splice block may also remove small cracks. If you use any of these methods to remove cracks and the airplane is re-inspected before further flight and no cracks are found, you may continue to follow the repetitive inspection intervals for your airplane listed in paragraphs (i)(5), (i)(6), or (i)(7) of this AD.

(n) For all inspection methods (magnetic particle or eddy current), hours TIS for initial and repetitive inspection intervals and wing front lower spar cap life limit start over when

the wing front lower spar cap is replaced with a new P/N 20207–1, 20207–2, 20207–11, 20207–12, 20207–13, 20207–14, 20207–15, or 20207–16. These wing front lower spar caps must be inspected as specified in paragraphs (i)(3), (i)(5), (i)(6), and (i)(7) of this AD.

(1) If the wings or wing front lower spar caps were replaced with new or used wings or wing front lower spar caps during the life of the airplane and the logbook records positively show the hours TIS of the replacement wings or wing front lower spar caps, then initially inspect at applicable times specified in paragraph (i)(3) of this AD. Repetitively inspect thereafter at intervals specified paragraphs (i)(5), (i)(6), or (i)(7) of this AD. Replace the wing front lower spar caps upon reaching the life limit specified in Table 7 of this AD.

(2) If the wings or wing front lower spar caps were replaced with new or used wings or wing front lower spar caps during the life of the airplane and logbook records do not positively show the hours TIS of the replacement wings or wing front lower spar caps, then inspect within 50 hours TIS after February 24, 2010 (the effective date of this AD), unless already done. Repetitively inspect thereafter at intervals specified in paragraphs (i)(5), (i)(6), or (i)(7) of this AD. Replace the wing front lower spar caps within 500 hours TIS after February 24, 2010 (the effective date of this AD).

(3) If both wing front lower spar caps are replaced by installing the entire Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007, then initially inspect at 2,000 hours TIS as shown in paragraph (i)(3) of this AD. Repetitively inspect thereafter at intervals specified in paragraph (i)(7) of this AD. Replace the wing front lower spar caps at times specified in paragraph (i)(8) of this AD.

(o) Any wing front lower spar cap that is removed and is at or beyond the replacement time specified in this AD must be disposed of following the procedures in 14 CFR Part 43.10.

(p) Replacement times start over when the wing front lower spar cap is replaced with a new P/N 20207–1, 20207–2, 20207–11, 20207–12, 20207–13, 20207–14, 20207–15, or 20207–16. These wing front lower spar caps are now life-limited parts and must be replaced upon the accumulation of the hours TIS specified in Table 7 of this AD.

(q) Report any cracks you find within 10 days after the cracks are found or within 10 days after February 24, 2010 (the effective date of this AD), whichever occurs later. Send your report to Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5524; facsimile: (404) 474–5606; e-mail: *cindy.lorenzen@faa.gov.* The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056. Include in your report the following information:

(1) Aircraft model and serial number;

(2) Engine model;

(3) Aircraft hours TIS;

(4) Left and right wing front lower spar cap hours TIS;

(5) Hours TIS on the spar cap since last inspection;

(6) Crack location and size;

(7) Procedure (magnetic particle, ultrasonic, or eddy current) used for the last inspection;

(8) Description of any previous modifications and hours TIS when the modification was done, such as engine model change, installation of winglets, hopper capacity increase, cold working procedure done on bolt holes, installation of butterfly plates, or installation of Thrush Aircraft, Inc. Custom Kit No. CK–AG–41.

(r) Installation of the replacement wing front lower spar caps and other modification parts that are approved by FAA STC SA03654AT, Installation of Avenger Extended Performance Front Spar Enhancement Kit (new wing front spar lower caps, center splice and doublers), in accordance with Part II of Avenger Master Data List AAS–MDL–08–001, Revision B, dated November 26, 2008, terminates the actions required by this AD. The installation of FAA STC SA03654AT is an alternative to replacing the wing front lower spar caps with Ayres/Thrush wing front lower spar caps.

Special Flight Permits

(s) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by the following conditions:

(1) The hopper is empty;

(2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS); and

(3) Flight into known turbulence is prohibited.

Alternative Methods of Compliance (AMOCs)

(t) The Manager, Atlanta Aircraft Certification Office, (ACO) FAA, ATTN: Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5524; *facsimile:* (404) 474–5606; *e-mail: cindy.lorenzen@faa.gov;* or William O. Herderich, Aerospace Engineer, ACE–117A, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5547; *facsimile:* (404) 474–5606; *e-mail: william.o.herderich@faa.gov,* has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(u) AMOCs approved for AD 2006–07–15, AD 2003–07–01, AD 2000–11–16, AD 97–13–11, and/or AD 97–17–03 are approved as AMOCs for this AD except for those pertaining to ultrasonic inspection methods.

Material Incorporated by Reference

(v) You must use Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997; Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001; Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007; and Part II of Avenger Master Data List AAS–MDL–08–001, Revision B, dated November 26, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Thrush Aircraft, Inc. Custom Kit No. CK–AG–41, Revision A, dated March 8, 2007, and Part II of Avenger Master Data List AAS–MDL–08–001, Revision B, dated November 26, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 20, 2003 (68 FR 15653), the Director of the Federal Register approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001.

(3) On July 25, 2000 (65 FR 36055), the Director of the Federal Register approved the incorporation by reference of Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; and Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997.

(4) For service information identified in this AD, contact Thrush Aircraft, Inc., 300 Old Pretoria Road, P.O. Box 3149, Albany, Georgia 31706–3149, Internet: *http://www.thrushaircraft.com.* To obtain information about Avenger Master Data List AAS–MDL–08–001 and the optional installation of FAA STC SA03654AT, contact Avenger Aircraft and Services, 103 N. Main Street, Suite 106, Greenville, South Carolina 29601, *Internet: http://www.avengeraircraft.com.*

(5) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(6) You may also review copies of the service information incorporated by reference for this AD 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.*

Appendix to AD 2009–26–11

The following are examples of calculating equivalent Group 1 hours.

Example 1: S/N xxx was originally a Group 3 airplane; later it was modified with a Wright R–1820–71, 1200 horsepower, radial engine when the wing front lower spar caps had 15,700 hours TIS on them. The wing front lower spar caps have accumulated an additional 8,200 hours since the engine conversion for a total of 23,900 hours TIS on the wing front lower spar caps.

Usage Factor = 15,700 hours/28,800 + 8,200 hours/9,400 = 1.417

Equivalent Group 1 hours = 9,400 × 1.417 = 13,320 hours.

The wing front lower spar caps will need to be replaced within the next 1,000 hours TIS after the effective date of this AD as determined by Table 6 for a Group 1 airplane

with a radial engine with between 12,000 and 15,000 hours TIS.

Example 2: S/N yyy was originally a Group 3 airplane; later it was modified with a PT6A–34, 750 horsepower, turbine engine when the wing front lower spar caps had 5,300 hours TIS on them. The wing front lower spar caps now have 7,700 hours TIS.

Usage Factor = 5,300 hours/28,800 + (7,700 − 5,300)/6,200 = 0.571

Equivalent Group 1 hours = 6,200 × 0.571 = 3,540 hours.

The wing front lower spar caps will need to be replaced at 6,200 equivalent Group 1 total hours TIS, which is within the next 2,660 hours TIS (6,200 − 3,540 = 2,660).

Issued in Kansas City, Missouri, on January 8, 2010.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–594 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0029; Directorate Identifier 2009–NM–262–AD; Amendment 39–16179; AD 2009–21–10 R1]

RIN 2120–AA64

Airworthiness Directives; AVOX Systems and B/E Aerospace Oxygen Cylinder Assemblies, as Installed on Various Transport Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to certain AVOX Systems and B/E Aerospace oxygen cylinder assemblies, as installed on various transport airplanes. That AD currently requires removing certain oxygen cylinder assemblies from the airplane. This AD removes certain oxygen cylinder part numbers from the applicability. This AD was prompted by the reported rupture of a high-pressure gaseous oxygen cylinder, which had insufficient strength characteristics due to improper heat treatment. We are issuing this AD to prevent an oxygen cylinder from rupturing, which, depending on the location, could result in structural damage and rapid decompression of the airplane, damage to adjacent essential flight equipment, deprivation of the necessary oxygen supply for the flightcrew, and injury to cabin occupants or maintenance or other support personnel.

DATES: This AD is effective February 4, 2010.

We must receive any comments on this AD by March 8, 2010.

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.

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: Nicholas Wilson, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6476; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On November 25, 2009, we issued AD 2009–21–10, amendment 39–16049 (74 FR 63063, December 2, 2009). That AD applies to certain AVOX Systems and B/E Aerospace oxygen cylinder assemblies, as installed on various transport airplanes. That AD requires removing certain oxygen cylinder assemblies from the airplane. That AD was prompted by the reported rupture of a high-pressure gaseous oxygen cylinder, which had insufficient strength characteristics due to improper heat treatment. The actions specified in that AD are intended to prevent an oxygen cylinder from rupturing, which, depending on the location, could result in structural damage and rapid decompression of the airplane, damage to adjacent essential flight equipment, deprivation of the necessary oxygen supply for the flightcrew, and injury to cabin occupants or maintenance or other support personnel.

Actions Since AD Was Issued

Since we issued AD 2009–21–10, we have been notified that its applicability (in paragraph (c)) erroneously includes oxygen cylinder assemblies having part numbers B43570–3 and B43570–5. Those oxygen cylinder assemblies are manufactured from composite material, instead of steel, and the erroneous part numbers do not correspond to any serial numbers listed in the AD. Composite oxygen tanks are not subject to the identified unsafe condition. These part numbers have been removed from Table 1 of this AD.

We have also been notified that serial numbers K617383 through K617423 inclusive and K757064 through K757066 inclusive have been withdrawn from service. These serial numbers have been removed from Table 3 of this AD.

FAA's Determination and Requirements of This AD

Certain affected airplanes have been approved by the aviation authorities of other countries, and are approved for operation in the United States.

The unsafe condition described previously is likely to exist or develop in other products of these same type designs. For this reason, we are issuing this AD to revise AD 2009–21–10. This new AD retains the requirements of the existing AD, but removes part numbers B43570–3 and B43570–5 from the applicability of this AD, and removes certain serial numbers from Table 3 of this AD.

Additional Change to AD

We have revised this AD to identify the legal name of certain manufacturers as published in the most recent type certificate data sheet for the affected airplane models.

FAA's Justification and Determination of the Effective Date

This AD addresses the consequences of the potential rupture of certain oxygen cylinder assemblies. Because of our requirement to promote safe flight of civil aircraft and thus the critical need to ensure the proper functioning of the oxygen cylinders and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of

this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0029; Directorate Identifier 2009–NM–262–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

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–16049 (74 FR 63063, December 2, 2009) and adding the following new AD:

2009–21–10 R1 AVOX Systems and B/E Aerospace: Amendment 39–16179. Docket No. FAA–2010–0029; Directorate Identifier 2009–NM–262–AD.

Effective Date

(a) This airworthiness directive (AD) is effective February 4, 2010.

Affected ADs

(b) This AD revises AD 2009–21–10, Amendment 39–16049.

Applicability

(c) This AD applies to the oxygen cylinder assemblies, approved under United States Department of Transportation Regulations for Type 3HT cylinders, identified in Table 1 of this AD. These oxygen cylinder assemblies may be installed on various transport airplanes, certificated in any category, identified in but not limited to the airplanes included in Table 2 of this AD.

TABLE 1—AFFECTED OXYGEN CYLINDER ASSEMBLY PART NUMBERS

Manufacturer	Part Nos.
AVOX Systems	6350A34 series*
	800112–03
	800112–10
	800112–13
	801293–03
	801307–00
	801307–01
	801307–02
	801307–03
	801307–07
	801307–09
	801307–23
	801307–24
	801365–04
	801365–14
	801375–00
	801977–05
	8915 series*
B/E Aerospace	176018–115
	176112–115
	176177–115
	176181–115
	176529–97

(*For example, 6350A34–X–X or 8915XX–XX, where "X" denotes a part number digit.)

TABLE 2—AFFECTED AIRPLANES

Manufacturer	Model
Airbus	A300 B4–620, B4–622, B4–605R, and F4–605R airplanes.
	A310–203, –204, –221, –222, –304, and –324 airplanes.
	A318–111 and –112 airplanes.
	A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.
	A320–111, –211, –212, –214, –231, –232, and –233 airplanes.
	A321–111, –112, –131, –211, and –231 airplanes.
	A330–301, –321, and –322 airplanes.
	A340–211 and –212 airplanes.
	A340–311 and –312 airplanes.

TABLE 2—AFFECTED AIRPLANES—Continued

Manufacturer	Model
The Boeing Company	707–100 long body, –200, –100B long body, and –100B short body series airplanes; and 707–300, –300B, –300C, and –400 series airplanes.
	727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes.
	737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes.
	747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.
	757–200, –200PF, –200CB, and –300 series airplanes.
	767–200, –300, –300F, and –400ER series airplanes.
	777–200, –200LR, –300, –300ER, and 777F series airplanes.
Gulfstream Aerospace Corporation	G–IV airplanes.
McDonnell Douglas Corporation	DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes.
	DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes.
	DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), and DC–10–40 airplanes.
	MD–10–10F and MD–10–30F airplanes.
	MD–11 and MD–11F airplanes.
	MD–88 airplanes.
	MD–90–30 airplanes.
Short Brothers PLC	SD3–30, SD3–SHERPA, and SD3–60 SHERPA airplanes.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD was prompted by the reported rupture of a high-pressure gaseous oxygen cylinder, which had insufficient strength characteristics due to improper heat treatment. The Federal Aviation Administration is issuing this AD to prevent an oxygen cylinder from rupturing, which, depending on the location, could result in structural damage and rapid decompression of the airplane, damage to adjacent essential flight equipment, deprivation of the necessary oxygen supply for the flightcrew, and injury to cabin occupants or maintenance or other support personnel.

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 2009–21–10, With Revised Serial Numbers

Inspection

(g) Within 90 days after December 17, 2009 (the effective date of AD 2009–21–10), inspect to determine the serial number of the oxygen cylinder assemblies installed in the airplane. The serial number is stamped into the steel cylinder near the neck. A review of airplane records is acceptable in lieu of this inspection if the serial numbers of the oxygen cylinder assemblies can be conclusively determined from that review. For any oxygen cylinder assembly that has a serial number identified in Table 3 of this AD: Remove it from the airplane before further flight.

TABLE 3—AFFECTED OXYGEN CYLINDER ASSEMBLY SERIAL NUMBERS

Cylinder manufacturer	Affected Serial Nos.
AVOX Systems	ST82307 through ST82309 inclusive.
	ST82335 through ST82378 inclusive.
	ST82385 through ST82506 inclusive, except for S/N ST82498, which ruptured.
	ST82550 through ST82606 inclusive.
	ST82617 through ST82626 inclusive.
	ST83896 through ST83905 inclusive.
	ST84209 through ST84218 inclusive.
	ST84224 through ST84236 inclusive.
	ST86138.
	ST86143.
	ST86145.
	ST86150.
	ST86169.
	ST86172.
	ST86177.
	ST86299 through ST86307 inclusive.
B/E Aerospace	K495120 through K495121 inclusive.
	K629573 through K629577 inclusive.
	K674451 through K674455 inclusive.

Parts Installation

(h) As of December 17, 2009, no person may install, on any airplane, a United States Department of Transportation Type 3HT oxygen cylinder assembly that has a part number identified in Table 1 of this AD and a serial number identified in Table 3 of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Nicholas Wilson, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6476; 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 refer to this AD.

Material Incorporated by Reference

(j) None.

Issued in Renton, Washington, on January 8, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–937 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27346; Directorate Identifier 2008–NM–205–AD; Amendment 39–16176; AD 2010–02–06]

RIN 2120–AA64

Airworthiness Directives; Sicma Aero Seat 90xx and 92xx Series Passenger Seats, Installed on, But Not Limited to ATR—GIE Avions de Transport Régional Model ATR42 Airplanes and Model ATR72 Airplanes

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

ACTION: Final rule.

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

> Cracks have been found in central spreaders P/N [part number] 92–000100–200–1 or P/N 92–000101–200–1. This may heavily affect the structural integrity of the seat.

Failure of the central spreaders could result in injury to an occupant during emergency conditions. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective February 24, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 24, 2010.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone 781–238–7161; fax 781–238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 6, 2007 (72 FR 17045). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Cracks have been found in central spreaders P/N [part number] 92–000100–200–1 or P/N 92–000101–200–1. This may heavily affect the structural integrity of the seat.

Failure of the central spreaders could result in injury to an occupant during emergency conditions. The required actions include repetitive visual inspections for cracking of central spreaders; replacement with new central spreaders if cracking is found; and eventual installation of doublers. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Change Costs of Compliance Section

Sicma Aero Seat (Sicma) states that the Costs of Compliance section of the NPRM reflects that many of the seats were addressed due to the MCAI issued in 2002 (reference Direction Générale de l'Aviation Civile Airworthiness Directive 2002–504 (AB), effective October 12, 2002). Sicma also states that there were a low number of ATR Model ATR42 and ATR72 airplanes with Sicma seats operating in the United States at that time. Sicma notes that the NPRM gives an incorrect impression of the extent of the issue. In addition, Airbus states that it is surprised by the figures in the Costs of Compliance section of the NPRM. Airbus notes that the quantity of seats specified in the NPRM represent 10 airplanes and that Sicma provided 1,029 kits for doing Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003 (an equivalent of eight airplanes).

We infer that the commenters request we change the Costs of Compliance section. We agree to change the Costs of Compliance section of this AD. We reevaluated the number of seats in the U.S. fleet that may be affected and reduced our initial estimate of 3,283 seat assemblies specified in the NPRM to 1,403 seat assemblies. We have modified the Costs of Compliance section in this AD accordingly to accurately represent the current number of affected airplanes on the U.S. registry.

Request To Include Previous Issues of Service Bulletins as Alternative Methods of Compliance

Airbus requests that we include previous versions of Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003, as alternative methods of compliance to this AD. Airbus notes that the changes to the original issue of Sicma Aero Seat Service Bulletin 92–25–005, dated July 17, 2002, have been to add an appendix that lists part numbers, add the estimated time for installation of the kit, and add details of the installation of the kit for each of the types of the kits.

We partially agree. In addition to the changes described by the commenter, Issue 1 of Sicma Aero Seat Service Bulletin 92–25–005, dated August 29, 2002, made changes to the description of the appropriate actions in Part One of the Accomplishment Instructions of the service bulletin. The findings and corresponding corrective actions specified in Sicma Aero Seat Service Bulletins 92–25–005, dated July 17, 2002, are different than those described in Issue 1 and subsequent issues of the service bulletin. Therefore, only Issue 1 and Issue 2 are acceptable additional methods of compliance for the actions required by this AD. We have added paragraph (f)(3) of this AD to give credit for actions done in accordance with Sicma Aero Seat Service Bulletins 92–25–005, Issue 1, dated August 29, 2002; and Issue 2, dated October 29, 2002.

Request To Clarify the Applicability

Airbus also requests that we clarify the applicability of the NPRM. Airbus notes that the seats listed in the appendix (annex) of Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003, concern ATR Model ATR42 and ATR72 airplanes and not Airbus airplanes.

We agree to clarify the applicability. The applicability of the NPRM specified 90xx and 92xx series passenger seats but did not limit the seats to those specified in Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003. We have limited the applicability of this AD by specifying 90xx and 92xx series seat part numbers as listed in Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003, including Annex 1, dated July 17, 2002.

We have also revised this AD to identify the correct legal name of the manufacturer of Model ATR42 and ATR72 airplanes as published in the most recent type certificate data sheet for the affected airplane models.

Compliance Time Change

We have replaced the compliance time "before March 31, 2010" for the installation specified in paragraph (e)(3) of the NPRM with "Within 24 months after the effective date of this AD" in paragraph (f)(2) of this AD (which corresponds to paragraph (e)(3) of the NPRM). We have also revised Note 2 of this AD to refer to the new compliance time. In developing an appropriate compliance time, we considered the safety implications and the normal maintenance schedules for timely accomplishment of the installation. We have determined that extending the compliance time will not adversely affect safety.

Clarification of Terminating Action

We have revised the sentence requiring repetitive inspections in paragraph (f)(1) of this AD by adding the phrase "until a new central spreader, P/N 92–000100–200–1 or P/N 92–000101–200–1, and doublers, P/N 00–6536, are installed in accordance with 'Part Three: Central Spreader Replacement' of the service bulletin." Installation of the central spreader and doublers terminates the repetitive inspections. We have also revised the wording in paragraph (f)(2) of this AD to clarify the terminating action.

Change to Directorate Identifier Number

The Engine and Propeller Directorate issued the NPRM for this AD and assigned Directorate Identifier 2007–NE–07–AD to the NPRM. Because the final rule is being issued by the Transport Airplane Directorate, we have re-assigned Directorate Identifier 2008–NM–205–AD to this AD and revised the directorate identifier references in the AD accordingly.

New Subject Paragraph and Note

We have added the Air Transport Association (ATA) of America Code identifying the subject of this AD to new paragraph (d) of this AD and revised the subsequent paragraph identifiers accordingly. We have also added Note 1 to this AD to clarify that when certain conditions exist, it is necessary to request approval of an alternative method of compliance.

Revision to Reason, FAA Difference, and Other FAA AD Provisions Paragraphs

To match the template specified in FAA Order 8040.5, we have added the phrase "The mandatory continuing airworthiness information (MCAI) states" before the quoted material in paragraph (e) of this AD, removed paragraph (f) of the NPRM, and added Note 2 to this AD. Note 2 of this AD includes the same information as paragraph (f) of the NPRM. We have also added paragraphs (g)(2) and (g)(3) to this AD.

Changes to Other Paragraphs in the NPRM

We have moved the text specified in paragraph (e)(2) of the NPRM into paragraph (f)(1) of this AD, and we have reidentified paragraph (e)(3) of the NPRM as paragraph (f)(2) of this AD. We have also made minor editorial changes to paragraphs (f)(1), (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD.

Changes to Service Bulletin References

We have revised the service bulletin references in paragraphs (f)(1), (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(2) of this AD to specify where each action is described in the relevant service bulletin.

Clarification of Compliance Time

We have added the phrase "before further flight" to paragraph (f)(1)(iii) of this AD to clarify the compliance time for doing the temporary repair and for doing the installation after removing the temporary repair.

We have also added the phrase "after accomplishing the inspection" to paragraph (f)(1)(i) of this AD to clarify the compliance time for doing the check specified in paragraph (f)(1)(i) of this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 1,403 seat assemblies on 105 airplanes of U.S. registry. We also estimate that it will take about 6 work-hours per seat assembly to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $207 per seat assembly. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $963,861, or $687 per seat assembly.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–02–06 Sicma Aero Seat: Amendment 39–16176. Docket No. FAA–2007–27346; Directorate Identifier 2008–NM–205–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 24, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Sicma Aero Seat 90xx and 92xx series passenger seats with part numbers (P/Ns) listed in Annex 1, dated July 17, 2002, of Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003. These products are installed on, but not limited to, ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes, and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category.

Note 1: This AD applies to certain Sicma Aero Seat passenger seats as installed on any airplane, regardless of whether the airplane has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

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

Cracks have been found in central spreaders P/N 92–000100–200–1 or P/N 92–000101–200–1. This may heavily affect the structural integrity of the seat.

Failure of the central spreaders could result in injury to an occupant during emergency conditions.

Actions and Compliance

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

(1) Within 500 flight hours after the effective date of this AD, perform a visual inspection of central spreaders, P/N 92–000100–200–1 and P/N 92–000101–200–1, of the affected seats using the Accomplishment Instructions, "Part One: Checking Procedure," of Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003 ("the service bulletin"). If no crack is found, repeat this inspection at intervals not exceeding 500 flight hours until a new central spreader, P/N 92–000100–200–1 or P/N 92–000101–200–1, and doublers, P/N 00–6536, are installed in accordance with "Part Three: Central Spreader Replacement" of the service bulletin. Type 1, 2, and 3 cracks are defined in the Accomplishment Instructions, "Part One: Checking Procedure," of the service bulletin.

(i) If a type 1 crack is found, within 6 months or 500 flight hours after accomplishing the inspection, whichever comes first, check the crack to determine that it did not enlarge to a type 2 or type 3 crack by using the Accomplishment Instructions, "Part One: Checking Procedure," of the service bulletin; install doublers, P/N 00–6536, by using the Accomplishment Instructions, "Part Two: Central Spreader Modification," of the service bulletin, and record this modification by using "B—Seat identification" of the Accomplishment Instructions, "Part One: Checking Procedure," of the service bulletin.

(ii) If a type 2 or 3 crack is found, before further flight, replace the affected central spreader with a new one with the same part number, equipped with doublers, P/N 00–6536, by using the Accomplishment Instructions, "Part Three: Central Spreader Replacement," of the service bulletin.

(iii) If a new spreader is unavailable, before further flight, do a temporary repair by installing doublers, P/N 00–6536, by using the Accomplishment Instructions, "Part Two: Central Spreader Modification," of the service bulletin. This temporary repair may remain in place no longer than 500 flight hours or six months, whichever comes first. After removing the temporary repair, before further flight, install a new spreader with the same P/N equipped with doublers, P/N 00–6536, by using the Accomplishment Instructions, "Part Three: Central Spreader Replacement," of the service bulletin, and record this modification by following the instructions in "B—Seat identification" of the Accomplishment Instructions, "Part Three: Central Spreader Replacement," of the service bulletin.

(2) If not already done, within 24 months after the effective date of this AD, install doublers, P/N 00–6536, on new central spreaders of affected seats by using the Accomplishment Instructions, "Part Three: Central Spreader Replacement," of Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003 ("the service bulletin"). Record this modification by following instructions in "B—Seat identification" of the Accomplishment Instructions, "Part Three: Central Spreader Replacement," of the service bulletin. Installing a new central spreader P/N 92–000100–200–1 or 92–000101–200–1, and doublers, P/N 00–6536 on all affected seats terminates the requirements of this AD.

(3) Actions accomplished before the effective date of this AD in accordance with Sicma Aero Seat Service Bulletin 92–25–005, Issue 1, dated August 29, 2002; and Issue 2, dated October 29, 2002; are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: The Direction Générale de l'Aviation Civile (DGAC) airworthiness directive 2002–504(AB), effective October 12, 2002, specifies that doublers, P/N 00–6536, be installed on central spreaders of affected seats by December 31, 2005. This AD requires the doublers to be installed within 24 months after the effective date of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone 781–238–7161; fax 781–238–7170. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective

actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI DGAC Airworthiness Directive 2002–504(AB), effective October 12, 2002; and Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003, including Annex 1, dated July 17, 2002; for related information.

(i) Contact Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate; 12 New England Executive Park, Burlington, MA 01803; telephone 781–238–7161; fax 781–238–7170, for more information about this AD.

Material Incorporated by Reference

(j) You must use Sicma Aero Seat Service Bulletin 92–25–005, Issue 3, dated January 17, 2003, including Annex 1, dated July 17, 2002, to do the actions required by this AD, unless the AD specifies otherwise. The Sicma Aero Seat service bulletin contains the following effective pages:

Page No.	Issue level shown on page	Date shown on page
1–30	3	January 17, 2003.
ANNEX 1		
1–3	Original	July 17, 2002.

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

(2) For service information identified in this AD, contact Sicma Aero Seat, 7 Rue Lucien Coupet, 36100 Issoudun, France; telephone +33 (0) 2 54 03 39 39; fax +33 (0) 2 54 03 15 16; e-mail: *customerservices@sicma.zodiac.com;* Internet *http://www.sicma.zodiac.com/en/.*

(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 January 8, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–701 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0636; Directorate Identifier 2009–NM–031–AD; Amendment 39–16158; AD 2010–01–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100B SUD, –200B, –300, –400, and –400D Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes. That AD currently requires repetitive inspections for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations; and repair if necessary. This new AD requires revising the applicability to include an additional airplane, and reduces compliance times for the initial inspection and repetitive intervals for Model 747–400 series airplanes that have been converted to the large cargo freighter configuration. This AD results from findings of cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations. We are issuing this AD to detect and correct fatigue cracking in certain fuselage stringers, which, if left undetected, could result in fuselage skin cracking that reduces the structural integrity of the skin panel, and consequent rapid depressurization of the airplane.

DATES: This AD becomes effective February 24, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 24, 2010.

The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003, as of August 30, 2005 (70 FR 43020, July 26, 2005).

ADDRESSES: 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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005–15–08, amendment 39–14197 (70 FR 43020, July 26, 2005). The existing AD applies to certain Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes. That NPRM was published in the **Federal Register** on July 14, 2009 (74 FR 33928). That NPRM proposed to require repetitive inspections for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations; and repair if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM.

Request for Change to Paragraph (g) of This AD

Boeing requests a change to paragraph (g) of the NPRM. The NPRM proposes to require repeating the inspections specified in paragraph (g) at intervals not to exceed 3,000 flight cycles until the requirements of paragraph (l) of the proposed AD are accomplished. Boeing

states that accomplishing the repair specified in paragraph (k) of the proposed AD terminates the repetitive inspections required by paragraph (g). Boeing therefore requests that we revise paragraph (g) of the proposed AD to also refer to paragraph (k) as a terminating action.

We partially agree. The repetitive inspections are terminated after accomplishment of paragraph (k) or (l) of this AD, but only at the stringer locations that are modified or repaired. We have revised paragraphs (g), (i), (j), and (l) of this final rule accordingly.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We have carefully reviewed the available data, including the comment that has been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 246 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2005–15–08).	3	$80	$240 per inspection cycle	69	$16,560 per inspection cycle.
Inspection required by this AD.	3	$80	$240 per inspection cycle	70	$16,800 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14197 (70 FR 43020, July 26, 2005) and by adding the following new airworthiness directive (AD):

2010–01–02 The Boeing Company: Amendment 39–16158. Docket No. FAA–2009–0636; Directorate Identifier 2009–NM–031–AD.

Effective Date

(a) This AD becomes effective February 24, 2010.

Affected ADs

(b) This AD supersedes AD 2005–15–08, Amendment 39–14197.

Applicability

(c) This AD applies to The Boeing Company Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009.

Subject

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

Unsafe Condition

(e) This AD results from findings of cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations. We are issuing this AD to detect and correct fatigue cracking in the specified fuselage stringers, which, if left undetected, could result in fuselage skin cracking that reduces the structural integrity of the skin panel, and consequent 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.

Requirements of AD 2005–15–08

Inspection for Certain Airplanes Subject to AD 2005–15–08 With New Service Bulletin

(g) For airplanes identified in Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003, except airplanes identified in paragraph (j) of this AD, do a detailed inspection for cracking in fuselage stringers

8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations, in accordance with Part 1 of the Accomplishment Instructions in Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003; or Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. Do the inspections at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until the requirements of paragraph (k) or (l) of this AD are accomplished. No further action is required by this AD for any stringer that is repaired or modified in accordance with paragraph (k) or (l) of this AD. After the effective date of this AD, use only Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009.

(1) For airplanes with 19,000 total flight cycles or less as of August 30, 2005 (the effective date of AD 2005–15–08): Prior to the accumulation of 8,000 total flight cycles, or within 2,000 flight cycles after August 30, 2005, whichever is later, not to exceed 20,000 total flight cycles.

(2) For airplanes with more than 19,000 total flight cycles as of August 30, 2005: Within 1,000 flight cycles after August 30, 2005.

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

New Requirements of This AD

Inspection: Variable Number RS699

(h) For Model 747 airplane variable number RS699, do a detailed inspection for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations, in accordance with Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009, at the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Before the accumulation of 8,000 total flight cycles.

(2) Within 2,000 flight cycles after the effective date of this AD.

(i) For Model 747 airplane variable number RS699, repeat the inspection specified in paragraph (h) of this AD thereafter at intervals not to exceed 3,000 flight cycles until the actions specified in paragraph (k) or (l) of this AD are accomplished. No further action is required by this AD for any stringer that is repaired or modified in accordance with paragraph (k) or (l) of this AD.

Inspection: Group 4 Airplanes

(j) For Group 4 airplanes as identified in Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009, do a detailed inspection for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations, within 1,000 flight cycles after the effective date of this AD. Do the actions in accordance with Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles until the actions specified in paragraph (k) or (l) of this AD are accomplished. No further action is required by this AD for any stringer that is repaired or modified in accordance with paragraph (k) or (l) of this AD.

Repair

(k) If cracking is found during any inspection required by this AD: Before further flight, repair the affected stringer in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003; or Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. After the effective date of this AD, use only Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009. Accomplishing the repair terminates the repetitive inspections required by this AD for that repaired stringer location only.

Optional Terminating Action

(l) Installing new frame clips and new doublers, and repairing as applicable, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003; or Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009; terminates the repetitive inspections required by this AD for that modified stringer only. After the effective date of this AD, use only Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle 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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; 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.

(4) AMOCs approved previously in accordance with AD 2005–15–08, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003; and Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 747–53A2484, Revision 1, dated February 12, 2009, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003, on August 30, 2005 (70 FR 43020, July 26, 2005).

(3) 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.*

(4) 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.

(5) 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 December 17, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30970 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0865; Directorate Identifier 2009–NM–023–AD; Amendment 39–16168; AD 2010–01–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes Equipped With General Electric CF6–45 or –50 Series Engines, or Equipped With Pratt & Whitney JT9D–3 or –7 (Excluding –70) Series Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That AD currently requires repetitive inspections to detect cracks and fractures of the strut front spar chord assembly (including the forward side) at each strut location, and repair if necessary. This new AD adds a one-time inspection for cracking of the forward side of the front spar chord assembly on the inboard and outboard struts, installation of a cap skin doubler for certain airplanes, and repair if necessary. These actions terminate the repetitive inspections of the forward side of the strut front spar chord assembly; the inspections of the aft side assembly continue as specified in the existing AD. This AD results from a report of a fractured front spar assembly for strut No. 3, which resulted in the loss of the strut upper link load path. We are issuing this AD to detect and correct cracks and fractures of the nacelle strut front spar chord assembly. Fracture of the front spar chord assembly could lead to loss of the strut upper link load path and consequent fracture of the diagonal brace, which could result in in-flight separation of the strut and engine from the airplane.

DATES: This AD becomes effective February 24, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 24, 2010.

On January 29, 2007 (72 FR 1427, January 12, 2007), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

ADDRESSES: 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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ken Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2007–01–15, amendment 39–14887 (72 FR 1427, January 12, 2007). The existing AD applies to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That NPRM was published in the **Federal Register** on September 18, 2009 (74 FR 47897). That NPRM proposed to continue to require repetitive inspections to detect cracks and fractures of the strut front spar chord assembly (including the forward side) at each strut location, and repair if necessary. That NPRM also proposed to add a one-time inspection for cracking of the forward side of the front spar chord assembly on the inboard and outboard struts, installation of a cap skin doubler for certain airplanes, and repair if necessary. The additional actions proposed in that NPRM would terminate the repetitive inspections of the forward side of the strut front spar chord assembly; the inspections of the aft side assembly would continue as specified in the existing AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment received on the NPRM. Boeing concurs with the proposed requirements specified in the NPRM.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces their previous designation as a Delegation Option Authorization holder. We have revised paragraph (q)(3) of this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Boeing Commercial Airplanes ODA rather than an Authorized Representative under the former Delegation Option Authorization program.

Conclusion

We have carefully reviewed the available data, including the comment that has been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD. AD as proposed.

Interim Action

We consider the actions in this AD to be interim actions for the strut front spar chord assembly at each strut location, excluding the forward side (the terminating action for the forward side is included in this AD). If the manufacturer develops a modification for the remainder of the front spar chord assembly, we might consider additional rulemaking.

Costs of Compliance

There are about 411 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2007-01-15).	17	$80	$0	$1,360, per inspection cycle.	85	$115,600, per inspection cycle.
One-time inspection and cap skin doubler installation (new action).	30 to 116 [1]	$80	$893 to $36,737 [1]	$3,293 to $46,017 [1]	85	$279,905 to $3,911,445.[1]

[1] Depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14887 (72 FR 1427, January 12, 2007) and by adding the following new airworthiness directive (AD):

2010–01–10 The Boeing Company: Amendment 39–16168. Docket No. FAA–2009–0865; Directorate Identifier 2009–NM–023–AD.

Effective Date

(a) This AD becomes effective February 24, 2010.

Affected ADs

(b) This AD supersedes AD 2007–01–15, Amendment 39–14887.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category, equipped with General Electric CF6–45 or -50 series engines, or equipped with Pratt & Whitney JT9D–3 or -7 (excluding -70) series engines, as identified in Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from a report of a fractured front spar assembly for strut No. 3, which resulted in the loss of the strut upper link load path. The Federal Aviation Administration is issuing this AD to detect and correct cracks and fractures of the nacelle strut front spar chord assembly. Fracture of the front spar chord assembly could lead to loss of the strut upper link load path and consequent fracture of the diagonal brace, which could result in in-flight separation of the strut and engine from 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 2004–25–05, Amendment 39–13893

Aft Side Detailed and High Frequency Eddy Current (HFEC) Inspections With New Service Information

(g) Within 90 days after December 27, 2004 (the effective date of AD 2004–25–05, which was superseded by AD 2007–01–15), perform detailed and HFEC inspections to detect any cracks or fractures of the front spar chord assembly for strut numbers 1 through 4 inclusive, in accordance with Boeing Alert Service Bulletin 747–54A2224, dated September 30, 2004; or in accordance with Part 1—Aft Side Inspection of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006. As of January 29, 2007 (the effective date of AD 2007–01–15), only Part 1—Aft Side Inspection of the Accomplishment Instructions of Revision 1 of Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006, may be used.

(h) Accomplishment of the detailed and HFEC inspections in accordance with Boeing 747 Fleet Team Digest 747–FTD–54–04002, dated April 15, 2004, May 4, 2004, June 1, 2004, July 12, 2004, or July 28, 2004; or Boeing Message 1–C6ELC (Service Request ID No.: 218724992), dated April 14, 2004; before December 27, 2004, is considered acceptable for compliance with the requirements of paragraph (g) of this AD.

Repetitive Inspections

(i) For airplanes on which no crack or fracture is detected during the inspections

required by paragraph (g) of this AD: At the applicable times specified in Table 1—Repetitive Intervals of this AD, repeat the detailed and HFEC inspections required by paragraph (g) of this AD.

TABLE 1—REPETITIVE INTERVALS

For airplanes identified in Boeing Alert Service Bulletin 747-54A2224, dated September 30, 2004; or Revision 1, dated November 16, 2006; as—	Repeat the inspections at intervals not to exceed—
Group 1	1,000 flight cycles or 18 months, whichever occurs first.
Group 2 and Group 3	1,200 flight cycles or 18 months, whichever occurs first.
Group 4 and Group 6	1,500 flight cycles or 18 months, whichever occurs first.
Group 5	2,000 flight cycles or 18 months, whichever occurs first.

Corrective Action

(j) If any crack or fracture is found during any inspection required by paragraphs (g) and (i) of this AD, and Boeing Alert Service Bulletin 747–54A2224, dated September 30, 2004; or Revision 1, dated November 16, 2006; specifies contacting Boeing for appropriate action: Before further flight, repair the crack or fracture using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

Restatement of Requirements of AD 2007–01–15

Forward Side Detailed and HFEC Inspections

(k) Within 90 days after January 29, 2007 the effective date of AD 2007–01–15), do detailed and HFEC inspections for any cracks or fracture of the front spar chord assembly for strut numbers 1, 2, 3, and 4, in accordance with Part 2—Forward Side Inspection of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006. If no crack or fracture is found, repeat the inspections thereafter at the applicable interval specified in Table 1 of this AD. Doing the inspections required by paragraph (n) of this AD terminates the forward side detailed and HFEC inspection requirements of this paragraph.

Corrective Action for Forward Side Inspection

(l) If any crack or fracture is found during any inspection required by paragraph (k) of this AD, and Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the crack or fracture using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

Credit for Inspections Done According to Boeing 747 Fleet Team Digest

(m) Detailed and HFEC inspections done before January 29, 2007, in accordance with Boeing 747 Fleet Team Digest 747–FTD–54–06002, dated June 29, 2006; or October 16, 2006; are acceptable for compliance with the initial inspection required by paragraph (k) of this AD.

New Requirements of This AD

Inspection and Corrective Actions

(n) At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–54A2230, dated October 30, 2008; except that 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: Do an open-hole high frequency eddy current (HFEC) inspection for cracking of the forward side of the front spar chord assembly on the inboard and outboard struts; and, for airplanes on which the cap skin doubler is not installed, install the cap skin doubler; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2230, dated October 30, 2008.

(o) If any crack is found during the inspection required by paragraph (n) of this AD: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(p) Doing all applicable actions required by paragraphs (n) and (o) of this AD terminates the repetitive forward side detailed and HFEC inspection requirements of paragraph (k) of this AD. All aft side inspection requirements of this AD remain in effect.

Alternative Methods of Compliance (AMOCs)

(q)(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: Ken Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; 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 the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that 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.

(4) AMOCs approved previously in accordance with AD 2007–01–15 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(r) You must use Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006; and Boeing Alert Service Bulletin 747–54A2230, dated October 30, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–54A2230, dated October 30, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006, on January 29, 2007 (72 FR 1427, January 12, 2007).

(3) 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*.

(4) 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.

(5) 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 December 30, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31363 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 120 and 135

[Docket No. FAA–2008–0937; Amendment No. 120–0A, 135–117A]

RIN 2120–AJ37

Drug and Alcohol Testing Program; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is correcting its drug and alcohol testing regulations published on May 14, 2009. The FAA inadvertently excluded necessary wording within the text of two separate definitions; added wording to the sections describing refusals to submit to drug or alcohol tests; directed readers to an incorrect subpart for a referenced definition; omitted a cross reference to a list of applicable regulations; and added wording when describing an operator. This rule corrects those inadvertent errors and includes other minor editorial corrections. These corrections will not impose any additional requirements on operators affected by these regulations.

DATES: Effective January 20, 2010.

FOR FURTHER INFORMATION CONTACT: Rafael Ramos, Office of Aerospace Medicine, Drug Abatement Division, AAM–800, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8442; facsimile (202) 267–5200; e-mail *drugabatement@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2009, we published a final rule (74 FR 22649) that amended the regulations governing FAA-required drug and alcohol testing requirements. The final rule was necessary to gather all of the existing drug and alcohol requirements into one part because the regulations governing FAA-required drug and alcohol testing requirements were scattered throughout Chapter I of Title 14, Code of Federal Regulations. In that final rule in § 120.7 we omitted the words "and alcohol" from the definitions for "DOT agency" and "Employer." In §§ 120.13 and 120.15, we inadvertently included the word "authorization." In §§ 120.17 and 120.33, we used the term "subpart" instead of "part" when directing readers to the definition of prohibited drugs. In §§ 120.103 and 120.211, we omitted the reference to § 135.1 from the list of applicable regulations. In § 120.117, we included the word "sightseeing" when describing an operator as defined in § 91.147 and omitted mailing instructions for § 91.147 operators. In § 120.119, we made reference to appendix H of 49 CFR part 40 as subpart H. In § 120.225, we omitted mailing instructions for § 91.147 operators. In the instruction for a change to 14 CFR part 135, we incorrectly listed a cross-reference to § 120.39 as § 135.39. This document corrects these errors.

List of Subjects

14 CFR Part 120

Air carriers, Airmen, Alcohol testing, Aviation safety, Charter flights, Commercial air tour operators, Drug testing, Operators, Safety, Safety-sensitive, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) parts 120 and 135 are amended as follows:

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101–45105, 46105, 46306.

■ 2. Revise paragraphs (g) and (i) of § 120.7 to read as follows:

§ 120.7 Definitions.

* * * * *

(g) *DOT agency* means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug and alcohol testing (14 CFR parts 61, 65, 121, and 135; 46 CFR part 16; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

* * * * *

(i) *Employer* is a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. An employer may use a contract employee who is not included under that employer's FAA-mandated drug and alcohol testing program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated drug and alcohol testing program and is performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor.)

* * * * *

■ 3. Revise paragraphs (b)(1) and (2) of § 120.13 to read as follows:

§ 120.13 Refusal to submit to a drug or alcohol test by a Part 63 certificate holder.

* * * * *

(b) * * *

(1) Denial of an application for any certificate or rating issued under part 63 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under part 63 of this chapter.

■ 4. Revise paragraphs (b)(1) and (2) of § 120.15 to read as follows:

§ 120.15 Refusal to submit to a drug or alcohol test by a Part 65 certificate holder.

* * * * *

(b) * * *

(1) Denial of an application for any certificate or rating issued under part 65 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under part 65 of this chapter.

■ 5. Revise paragraph (b) of § 120.17 to read as follows:

§ 120.17 Use of Prohibited drugs.

* * * * *

(b) No employer may knowingly use any individual to perform, nor may any individual perform for an employer, either directly or by contract, any air traffic control function while that individual has a prohibited drug, as defined in this part, in his or her system.

* * * * *

■ 6. Revise paragraph (b) of § 120.33 to read as follows:

§ 120.33 Use of prohibited drugs.

* * * * *

(b) No certificate holder or operator may knowingly use any individual to perform, nor may any individual perform for a certificate holder or an operator, either directly or by contract, any function listed in subpart E of this part while that individual has a prohibited drug, as defined in this part, in his or her system.

* * * * *

■ 7. Add paragraph (d)(2)(v) of § 120.103 to read as follows:

§ 120.103 General.

* * * * *

(d) * * *
(2) * * *
(v) § 135.1—Applicability
* * * * *

■ 8. Revise paragraphs (a)(2) and (e)(2) of § 120.117 to read as follows:

§ 120.117 Implementing a drug testing program.

(a) * * *

If you are ...	You must ...
* * * * * * *	
(2) An operator as defined in § 91.147 of this chapter	Register with the FAA by contacting the Flight Standards District Office nearest to your principal place of business.
* * * * * * *	

* * * * *

(e) * * *

(2) Send this information in the form and manner prescribed by the Administrator, in duplicate to the appropriate address below:

(i) For § 91.147 operators: The Flight Standards District Office nearest to your principal place of business.

(ii) For all others: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

■ 9. Revise paragraph (b) of § 120.119 to read as follows:

§ 120.119 Annual reports.

* * * * *

(b) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by DOT. The Administrator may designate means (*e.g.,* electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, *see: http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol.*

* * * * *

■ 10. Add paragraph (b)(5) to § 120.211 to read as follows:

§ 120.211 Applicable Federal regulations.

* * * * *

(b) * * *

(5) § 135.1—Applicability

■ 11. Revise paragraph (e)(2) of § 120.225 to read as follows:

§ 120.225 How to implement an alcohol testing program.

* * * * *

(e) * * *

(2) Send this information in the form and manner prescribed by the Administrator, in duplicate to the appropriate address below:

(i) For § 91.147 operators: The Flight Standards District Office nearest to your principal place of business.

(ii) For all others: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 13. Revise paragraph (a)(5) of § 135.1 to read as follows:

§ 135.1 Applicability.

(a) * * *

(5) Nonstop Commercial Air Tour flights conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport; provided further that these operations must comply only with the drug and alcohol testing requirements in §§ 120.31, 120.33, 120.35, 120.37, and 120.39 of this chapter; and with the provisions of part 136, subpart A, and § 91.147 of this chapter by September 11, 2007.

* * * * *

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2010–908 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Children's Products Containing Lead; Exemptions for Certain Electronic Devices

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a final rule concerning certain electronic devices for which it is not technologically feasible to meet the lead limits as required under section 101 of the Consumer Product Safety Improvement Act of 2008 (CPSIA).[1]

DATES: *Effective Date:* This final rule is effective on January 20, 2010.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *khatlelid@cpsc.gov;* telephone (301) 504–7254.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, 122 Stat. 3016, provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that, by February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. The limit

[1] The Commission voted 5–0 to publish this final rule, with changes, in the **Federal Register.** Chairman Inez M. Tenenbaum, and Commissioners Thomas H. Moore, Nancy Nord, Robert Adler, and Anne Northup voted to publish the notice with changes. Commissioner Northup issued a statement, and the statement can be found at *http://www.cpsc.gov/PR/northup01062010devices.pdf.*

will be further reduced to 100 ppm after three years, or August 14, 2011, unless the Commission determines that it is not technologically feasible to meet this lower limit. Section 3(a)(16) of the Consumer Product Safety Act, as amended by section 235(a) of the CPSIA, defines "children's product" as a "consumer product designed or intended primarily for children 12 years of age or younger."

B. Statutory Authority

Section 101(b)(2) of the CPSIA provides that the lead limits do not apply to component parts of a product that are not accessible to a child. This section specifies that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission. Paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child. Section 101 (b)(2)(B) of the CPSIA further provides that the Commission shall promulgate a rule providing guidance with respect to what product components or classes of components will be considered to be inaccessible. An interpretative rule providing guidance on inaccessibility (inaccessibility rule) was published in the **Federal Register** on August 7, 2009 (74 FR 39535).

In addition, if the Commission determines that it is not technologically feasible for certain electronic devices to comply with the lead limits, section 101(b)(4) of the CPSIA provides that the Commission shall issue requirements by regulation to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices, and establish a schedule for achieving full compliance unless the Commission determines that full compliance with the lead limits is not technologically feasible within such a schedule. Under section 101(d) of the CPSIA, technological feasibility is based on the commercial availability of products, technology, or other practices that will allow compliance with the lead limits.

On January 15, 2009, the Commission issued a notice of proposed rulemaking on requirements for certain electronic devices that could not comply with the lead limits due to technological infeasibility (74 FR 2435). The notice of proposed rulemaking was withdrawn on February 12, 2009 (74 FR 7021). On that date, the Commission issued an interim final rule (74 FR 6991) to provide certain exemptions for children's electronic devices including:

- Inaccessible lead-containing component parts;
- Accessible lead-containing components parts that cannot be produced without lead due to the lack of technologically feasible substitutions and which require lead for the proper functioning of the component part; and
- Lead-containing spare parts or other removable components which are inaccessible when the product is assembled in functional form or is otherwise granted an exemption.

The interim final rule also directed Commission staff to reevaluate and report to the Commission on the technical feasibility of compliance with the lead limits, including the technological feasibility of making accessible component parts inaccessible, and the status of the exemptions no less than every five years after publication of a final rule in the **Federal Register.** Comments on the interim final rule were due on March 16, 2009.

C. Discussion of Comments to the Interim Final Rule

The Commission received seven comments from consumer groups, electronics associations, companies, and individuals. In general, most comments sought to narrow or expand the scope of the exemptions.

1. Summary of the Law—Section 1500.88(a)

Section 1500.88(a), in essence, summarized the lead content limits in children's products under section 101 of the CPSIA and how, over time, the limits decrease from 600 ppm to 100 ppm by August 14, 2011 unless the Commission determines that it is not technologically feasible to meet this lower limit. Section 1500.88(a) also stated that, "Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child."

We did not receive any comment on this provision. However, we have, on our own initiative, revised the last sentence by adding, "Section 101(b)(2) of the CPSIA further provides that the lead limits do not apply to component parts of a product that are not accessible to a child. This section specifies that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission."

2. Technological Feasibility—Section 1500.88(b)

Section 1500.88(b) explained that if the Commission determines that it is not technologically feasible for certain electronic devices, the Commission must issue requirements by regulation to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices and establish a schedule by which such electronic devices shall be in full compliance unless the Commission determines that full compliance is not technologically feasible for such devices within a schedule set by the Commission.

We have, on our own initiative, modified this section to add "within a schedule set by the Commission" after "such devices." This modification reflects the statutory language at section 101(b)(4)(B) of the CPSIA.

One commenter requested guidance regarding the definition of "electronic devices."

The CPSIA does not provide a definition for electronic devices. However, we believe a reasonable definition of an electronic device is "a device that generates, stores, distributes, or converts electrical energy into another energy form." Examples of children's electronic devices include, but are not limited to, products with batteries or power cords (or that use solar power or other power sources), such as music players, headphones, some toys and games, some calculators, and certain computers or similar electronic learning products.

3. Certain Lead-Containing Component Parts—Section 1500.88(c)

Section 1500.88(c) provided that certain lead-containing component parts in electronic devices that are unable to meet the lead limits would be granted exemptions provided that the use of lead is necessary for the proper functioning of the component part and it is not technologically feasible for the component part to meet the lead content limits.

On our own initiative, we have modified this section to add the word "accessible" in between "certain" and "lead-containing component parts," to make clear that the exemptions in the rule are applicable only to accessible component parts. Inaccessible component parts are already excluded from the lead limits under section 101(b)(2) of the CPSIA.

One commenter stated that the exemptions should be narrowed to cover only components of electrical goods. This commenter asserted that the language in the interim final rule could be read to exclude general materials that contain metal alloys and enable manufacturers to add lead although it may not be technologically necessary to do so.

The rule was intended to be limited to the materials and components necessary for the electronic functioning of children's electronic devices. In response to the comments, we have revised § 1500.88(c) by adding the word "electronic" before the word "functioning." In addition, we have further clarified § 1500.88(d) to add the word "electronic" before "component parts" in the first sentence. Non-functional uses of lead in children's electronic devices remain subject to the lead content limits under section 101(a) of the CPSIA. For example, if the metal component part was purely decorative, such as a cell phone charm or wrist accessory sold with, or attached to, a child's phone, that charm or accessory is not necessary to the proper electronic functioning of the component part and is subject to the lead content limits.

Another commenter requested that the exemptions for the metal alloy components in children's electronic devices be extended to products whose mechanical functions require the use of material containing lead, such as a brass collar on the wheel of a toy. The commenter also asserted that the electronic exemption for "lead-bronze bearing shells and bushings" are not primarily used for the transmission of electrical current, but are mechanical devices.

Section 101(b)(4) of the CPSIA allows exemptions to the lead content limits if the Commission finds that it is not technologically feasible to remove the lead from the electronic devices. This section does not provide for exemptions for other types of products that are unrelated to electronic devices. The exemptions under this rule include bearing shells and bushings only when those bearing shells and bushings are integral to the operation of certain electronic devices, such as electric motors. For this reason, lead-bronze bearing shells and bushings are allowed in children's electronic devices. However, the exemption does not extend to bearing shells and bushings in children's products that are unrelated to electronic operations because they do not fall within the scope of these exemptions. Such components must comply with the CPSIA's lead content limits. We note that if such components are inaccessible to a child, they would not be subject to the CPSIA lead content limits under 16 CFR 1500.87.

One commenter stated that the health implications of lead exposure from the electronic products have not been considered and that the interim final rule does not provide an incentive to improve technology to reduce lead content. The commenter also stated that exempted products should be labeled as to lead content. Another commenter stated that no exemptions should be granted given the dangerous effects of lead in children.

As discussed in the preamble to the interim final rule (74 FR at 6992), the complete elimination of lead, or the reduction in lead content to the lead content limits specified in the CPSIA, is currently not technologically feasible for certain components of children's electronic products. Accordingly, the final rule provides for exemptions from the lead limits for a limited number of components of electronic devices that must be manufactured using lead, including in certain metal alloys. Such component parts could include power cord pins, cathode-ray tubes, and electrical connectors. Children are not expected to experience significant exposures to lead from these few applications. The lead containing components that are being exempted are components that one would not expect children to mouth, swallow, or handle for significant periods under normal and reasonably foreseeable conditions. Moreover, with few exceptions, many electronic devices will be in compliance with the lead limits under the CPSIA either because they already meet the lead content limits or because the lead-containing component part is inaccessible (74 FR at 6992).

Furthermore, we do not believe that labeling electronic devices for their lead content would add to the safety of these products. In the absence of the exemptions provided for in the CPSIA and this rule, certain electronics devices would be banned if they were intended primarily for children. The likely substitute for some of these products would be similar products that are intended for general consumer use. Thus, not providing these exemptions could result in increases in the children's lead exposure from products intended for general consumer use that are not subject either to the lead limitations in the CPSIA or the alternate lead limits provided for in the exemptions under this rule.

We also disagree with the commenter's assertion that the rule does not provide incentives for technological improvements. Congress recognized that certain electronic devices currently may not be able to meet the lead content limits. However, under section 101(b)(5) of the CPSIA, the Commission specifically was directed to periodically review and revise the regulations, as necessary, no less than every five years. The Commission intends to continue to evaluate the technological feasibility of making accessible component parts inaccessible, and to reevaluate the exemptions within that time frame as provided under § 1500.88(f) of this rule.

4. Exemptions for Lead—Section 1500.88(d)

This section set forth the specific exemptions for lead as used in certain component parts in children's products. As discussed in part C.3 of this preamble, we have added the word "electronic" before "component parts" in the first sentence of § 1500.88(d) to make clear that this rule applies to materials and components necessary for the electronic functioning of children's electronic devices.

Additionally, on our own initiative, we have revised § 1500.88(d)(1) to insert a comma between "electronic components" and "and fluorescent tubes" to clarify that electronic components and fluorescent tubes should be considered as separate items rather than as one item or as synonyms. We also have revised § 1500.88(d)(2) to replace "3,500 ppm" with "3,500 ppm," for purposes of consistency with how the ppm levels are expressed elsewhere in the final rule. We also have revised § 1500.88(d)(8) to insert a comma between "the seal frit and frit ring" and "as well as in print pastes" to clarify that a seal frit and frit ring are distinct from print pastes.

Commenters representing the electronics industry manufacturers asserted that the list of exempted materials and components in the final rule is too limited. They requested that the rule incorporate all of the current exemptions of the use of lead in the European Union's Restriction on Hazardous Substances (EU RoHS) directive to avoid inconsistencies and to harmonize with other standards. They claimed that while ongoing research aims to find alternatives and eliminate the use of lead, it is not yet technologically feasible to avoid all uses of lead. The commenters also asserted that testing for lead in electronic products is difficult and costly.

We do not believe that it is necessary to incorporate into the rule all of the exemptions listed in the EU RoHS directive. (European Union Directive 2002/95/EC and amendments to the directive are available at *http://eur-*

lex.europa.eu/en/index.htm.) The European Union and other countries and authorities have adopted restrictions on the use of lead and other chemicals in electronic devices to address concerns related to human health and environmental impacts of waste electrical and electronic equipment. The EU RoHS directive allows certain exemptions if substitution is not possible from the scientific and technical point of view or if the negative environmental or health impacts caused by substitution are likely to outweigh the human and environmental benefits of the substitution. It also specifies that exemptions must be reviewed at least every four years with the aim of removing such exemptions if it becomes technologically or scientifically possible to replace the lead in a particular application. The list of exemptions covered under the EU RoHS directive is intended to cover all electric and electronic equipment.

The list of exemptions provided under this rule is intended to allow the use of lead-containing components used in children's products that are necessary for the electronic functioning of the children's electronic device. Accordingly, the list of exemptions does not include exemptions for uses of lead in components that have no application to, or would not otherwise be used in children's products. For example, adopting the EU RoHS directive would result in the inclusion of EU RoHS directive exemption 23, "Lead alloys as solder for transducers used in high-powered (designed to operate for several hours at acoustic power levels of 125dB SPL and above) loudspeakers" into the final rule. Such high powered speakers may be appropriate for use in a stadium, but are not a children's product. Because the commenters did not identify any specific exemption under the EU RoHS directive or similar directives that may, in fact, require the use of lead in a component of children's electronic devices and that also is not listed as an exemption under this rule, we decline to revise the list of exemptions at this time. We note that this rule does not preclude the commenters from complying with the EU RoHS directive if they choose to do so. However, if commenters need additional exemptions for lead-containing component parts in children's electronic devices, they can submit a petition under the procedures set forth under 16 CFR part 1051 with the supporting documentation. A general request for regulatory action which does not reasonably specify the type of action requested is not sufficient for purposes of a petition request. 16 CFR 1051.6(a)(5).

Commenters also requested that the rule explicitly state that exempted or inaccessible parts are not subject to the testing requirement of section 102 of the CPSIA.

With regard to inaccessible component parts, the preamble to the inaccessibility rule stated that a manufacturer currently is not required to provide third-party testing to demonstrate inaccessibility (74 FR at 39537). In addition, many of the exemptions provided under this rule do not require testing under section 102 of the CPSIA because there are no lead limits associated with the exemptions. However, the exemptions for the metal alloys are not blanket or absolute exemptions. Instead, they are presented as alternate lead limits. As such, those components, i.e., copper (less than 4 percent lead by weight), steel (less than 0.35 percent lead by weight), and aluminum (less than 0.4 percent lead by weight), must still be tested by the manufacturer to verify that these component parts comply with these higher lead limits under section 102 of the CPSIA.

The Commission intends to address component part testing and the establishment of protocols and standards for ensuring that children's products are tested for compliance with applicable children's products safety rules in an upcoming rulemaking.

As for the other specific exemptions mentioned in § 1500.88(d), such as lead used in compliant pin connector systems (§ 1500.88(d)(6)), lead used in optical and filter glass (§ 1500.88(d)(7)), lead oxide in plasma display panels and surface conduction electron emitter displays used in structural elements (§ 1500.88(d)(8)), and lead oxide in the glass envelope of Black Light Blue lamps (§ 1500.88(d)(9)), we did not receive comments on those provisions. Consequently, the final rule retains those provisions without change.

5. Removable or Replaceable Parts—Section 1500.88(e)

This section provided that components of electronic devices that are removable or replaceable, such as battery packs and light bulbs, are not subject to the lead content limits if they were otherwise granted an exemption, or are inaccessible when the product is assembled in functional form.

On our own initiative, we have added commas after "replaceable" and "exemption" to clarify that section for readability.

Several commenters addressed removable and replaceable parts. Some commenters supported the exemption from the lead content limits for such parts on the basis that replacing or installing parts of a children's electronic device is not a children's activity. Other commenters opposed the exemption because children could access the lead-containing parts when they are not installed.

We decline to revise the rule as suggested by some commenters. We have determined that removable or replaceable parts, such as battery packs and light bulbs, that are inaccessible when installed in the product, are not subject to the lead content requirements. When installed, such parts are inaccessible under 16 CFR 1500.87. In addition, these types of spare parts or replacement parts, including battery pack and light bulbs, are not intended primarily for children since such parts are available for general use by the public. While spare parts may sometimes be included with a children's product, in many instances, the parts, necessary for the functioning of the electronic device, are to be installed by adults, and are inaccessible to children once installed.

One commenter requested guidance regarding whether a metal key sold with electrical electronic equipment would be subject to the lead content limits. According to the commenter, keys are made with copper alloy and aluminum and contain lead of up to 0.4%. The commenter stated that substitutes containing lead below 300 ppm are unavailable.

The definition of "children's product" means a consumer product designed or intended primarily for children 12 years of age. A key used in connection with a child's electronic device does not necessarily make the key a children's product if the key is intended for an adult to use in safeguarding or monitoring the use of the electronic equipment. In such instances, the key would be in the possession of the adult at all times, and would not be considered a children's product. In other instances, if a key is to be used primarily by a child in connection with an electronic device, an exemption from the lead content limits under the CPSIA would apply only in instances where such a key is necessary for the electronic functioning of the device.

6. Review Period—Section 1500.88(f)

This section provides that the Commission staff will reevaluate and report to the Commission on the technological feasibility of compliance with the lead content limits for

children's electronic devices, including the technological feasibility of making accessible component part inaccessible, and the status of the exemptions no less than every five years.

One commenter stated that the EU RoHS directive specifies that exemptions must be reviewed every four years. The commenter requested that the Commission adopt the same four year review cycle.

As discussed in part C.4 of this preamble, we are not adopting all of the exemptions in the EU RoHS directive. Accordingly, the Commission's review of the exemptions provided under this rule will be based on the application of lead in children's electronic devices. Section 101(b)(5) of the CPSIA provides that reviews and possible revision must occur no less frequently than every five years. Thus, we do not believe that the rule needs to be revised at this time. However, to the extent technological advances are made in the next few years, such that the existing exemptions warrant revision or rescission, we will review such changes and consider revisions prior to the five year review period.

D. Impact on Small Businesses

Under the Regulatory Flexibility Act (RFA), when an agency issues a proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities.

In the preamble to the interim final rule (74 FR at 6992), the Commission's Directorate for Economic Analysis determined that the exemption for certain specified materials from the requirements of section 101(a) of the CPSIA will not result in any increase in the costs of production for any firm. Its only effect on businesses, including small businesses, will be to reduce the costs associated with compliance with the lead content limits of the CPSIA. Based on the foregoing assessment, the Commission certifies that the rule would not have a significant impact on a substantial number of small entities.

E. Environmental Considerations

Generally, CPSC rules are considered to "have little or no potential for affecting the human environment," and environmental assessments are not usually prepared for these rules (*see* 16 CFR 1021.5(c)(1)). The final rule is not expected to have an adverse impact on the environment, thus, the Commission concludes that no environment assessment or environmental impact statement is required in this proceeding.

F. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of regulations such as this final rule is stated in section 18 of the Federal Hazardous Substances Act. 15 U.S.C. 1261n.

G. Effective Date

The Administrative Procedure Act requires that a substantive rule must be published not less than 30 days before its effective date, unless the rule relieves a restriction. 5 U.S.C. 553(d)(1). Because the final rule provides relief from existing testing requirements under the CPSIA and is virtually identical to an interim final rule that has been in effect since February 10, 2009, the effective date for the final rule is January 20, 2010.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

■ For the reasons stated above, the Commission amends chapter II of title 16 of the Code of Federal Regulations as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278, 122 Stat. 3016.

■ 2. Revise § 1500.88 to read as follows:

§ 1500.88 Exemptions from lead limits under section 101 of the Consumer Product Safety Improvement Act for Certain Electronic Devices.

(a) The Consumer Product Safety Improvement Act (CPSIA) provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit will be further reduced to 100 ppm, unless the Commission determines that it is not technologically feasible to meet this lower limit. Section 101(b)(2) of the CPSIA further provides that the lead limits do not apply to component parts of a product that are not accessible to a child. This section specifies that a component part is not accessible if it is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, as determined by the Commission. Paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate to be inaccessible to a child.

(b) Section 101(b)(4) of the CPSIA provides that if the Commission determines that it is not technologically feasible for certain electronic devices to comply with the lead limits, the Commission must issue requirements by regulation to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices and establish a compliance schedule unless the Commission determines that full compliance is not technologically feasible within a schedule set by the Commission.

(c) Certain accessible lead-containing component parts in children's electronic devices unable to meet the lead limits set forth in paragraph (a) of this section due to technological infeasibility are granted the exemptions that follow in paragraph (d) of this section below, provided that use of lead is necessary for the proper electronic functioning of the component part and it is not technologically feasible for the component part to meet the lead content limits set forth in paragraph (a) of this section.

(d) Exemptions for lead as used in certain electronic components parts in children's electronic devices include:

(1) Lead blended into the glass of cathode ray tubes, electronic components, and fluorescent tubes.

(2) Lead used as an alloying element in steel. The maximum amount of lead shall be less than 0.35% by weight (3,500 ppm).

(3) Lead used in the manufacture of aluminum. The maximum amount of lead shall be less than 0.4% by weight (4,000 ppm).

(4) Lead used in copper-based alloys. The maximum amount of lead shall be less than 4% by weight (40,000 ppm).

(5) Lead used in lead-bronze bearing shells and bushings.

(6) Lead used in compliant pin connector systems.

(7) Lead used in optical and filter glass.

(8) Lead oxide in plasma display panels (PDP) and surface conduction electron emitter displays (SED) used in structural elements; notably in the front and rear glass dielectric layer, the bus electrode, the black stripe, the address electrode, the barrier ribs, the seal frit and frit ring, as well as in print pastes.

(9) Lead oxide in the glass envelope of Black Light Blue (BLB) lamps.

(e) Components of electronic devices that are removable or replaceable, such as battery packs and light bulbs that are inaccessible when the product is assembled in functional form or are otherwise granted an exemption, are not subject to the lead limits in paragraph (a) of this section.

(f) Commission staff is directed to reevaluate and report to the Commission on the technological feasibility of compliance with the lead limits in paragraph (a) of this section for children's electronic devices, including the technological feasibility of making accessible component parts inaccessible, and the status of the exemptions, no less than every five years after publication of a final rule in the **Federal Register** on children's electronic devices.

Dated: January 12, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–877 Filed 1–19–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Change of Sponsor's Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Fort Dodge Animal Health, A Division of Wyeth Holdings Corp. to Fort Dodge Animal Health, Division of Wyeth Holdings Corp., a wholly owned subsidiary of Pfizer, Inc. In a separate action, FDA is amending the animal drug regulations to reflect a change of sponsor's name from Fort Dodge Animal Health, Division of Wyeth to Fort Dodge Animal Health, Division of Wyeth, a wholly owned subsidiary of Pfizer, Inc. In each case, the sponsor's mailing address will be changed.

DATES: This rule is effective January 20, 2010.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, A Division of Wyeth Holdings Corp., P.O. Box 1339, Fort Dodge, IA 50501 has informed FDA of a change of name and mailing address to Fort Dodge Animal Health, Division of Wyeth Holdings Corp., a wholly owned subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017. In a separate action, Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501 has informed FDA of a change of name and mailing address to Fort Dodge Animal Health, Division of Wyeth, a wholly owned subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect these changes.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), revise the entries for "Fort Dodge Animal Health, A Division of Wyeth Holdings Corp." and "Fort Dodge Animal Health, Division of Wyeth"; and in the table in paragraph (c)(2), revise the entries for "000856" and "053501" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Fort Dodge Animal Health, Division of Wyeth Holdings Corp., a wholly owned subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017	053501
Fort Dodge Animal Health, Division of Wyeth, a wholly owned subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017	000856
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
000856	Fort Dodge Animal Health, Division of Wyeth, a wholly owned subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017
* * * * *	
053501	Fort Dodge Animal Health, Division of Wyeth Holdings Corp., a wholly owned subsidiary of Pfizer, Inc., 235 East 42d St., New York, NY 10017
* * * * *	

Dated: January 8, 2010.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–930 Filed 1–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9475]

RIN 1545–BF83

Corporate Reorganizations; Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9475) that were published in the **Federal Register** on Friday, December 18, 2009 (74 FR 67053) providing guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction.

DATES: This correction is effective on January 20, 2010, and is applicable on December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9475) that are the subject of this document are under sections 358, 368 and 1502 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9475) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

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 1.368–2 is amended by revising paragraph (l)(2)(iv) to read as follows:.

§ 1.368–2 Definition of terms.

* * * * *

(l) * * *

(2) * * *

(iv) *Exception.* Paragraph (l)(2) of this section does not apply to a transaction otherwise described in § 1.358–6(b)(2).

* * * * *

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2010–866 Filed 1–19–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9475]

RIN 1545–BF83

Corporate Reorganizations; Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9475) that were published in the **Federal Register** on Friday, December 18, 2009 (74 FR 67053) providing guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction.

DATES: This correction is effective on January 20, 2010, and is applicable on December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9475) that are the subject of this document are under sections 358, 368 and 1502 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9475) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9475), which were the subject of FR Doc. E9–30170, is corrected as follows:

1. On page 67054, column 1, in the preamble, under the paragraph heading "Background", line 12 from the bottom of the column, the language "transaction if the same persons or" is removed and replaced with the language "transaction if the same person or" in its place.

2. On page 67055, column 2, in the preamble, under the paragraph heading "Issuance of Nominal Share", line 9 from the bottom of the third paragraph of the column, the language "the rule that if the same persons or" is removed and replaced with the language "the rule that if the same person or" in its place.

Guy R. Traynor,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2010–869 Filed 1–19–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF 15F; AG Order No. 3133–2010]

RIN 1140–AA30

Commerce in Explosives—Storage of Shock Tube With Detonators (2005R–3P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) by allowing shock tube to be stored with detonators because these materials when stored together do not pose a mass detonation hazard. Shock tube is a small diameter plastic laminate tube coated with a very thin layer of explosive material. When initiated, it transmits a low energy wave from one point to another. The outer surface of the tube remains intact during and after functioning.

DATES: This rule is effective March 22, 2010.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648–7094.

SUPPLEMENTARY INFORMATION:

I. Background

ATF is responsible for implementing Title XI, Regulation of Explosives (18 United States Code (U.S.C.) chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Under section 847 of title 18, U.S.C., the Attorney General "may prescribe such rules and regulations as

he deems reasonably necessary to carry out the provisions of this chapter." Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 555 ("Commerce in Explosives").

II. Notice of Proposed Rulemaking

On January 29, 2003, ATF published in the **Federal Register** a notice of proposed rulemaking (NPRM) soliciting comments from the public and industry on a number of proposals to amend the regulations in part 555 (Notice No. 968, 68 FR 4406).[1] ATF issued the NPRM, in part, pursuant to the Regulatory Flexibility Act (RFA), which requires an agency to review, within ten years of publication, rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities. Notice No. 968 proposed amendments to the regulations that were initiated by ATF and amendments proposed by members of the explosives industry. In particular, ATF proposed to amend the regulations regarding the storage of shock tube. In general, § 555.213(b) provides that detonators are not to be stored in the same magazine with other explosive materials. However, in a type 4 magazine, detonators that will not mass detonate may be stored with electric squibs, safety fuse, igniters, and igniter cord. ATF proposed to amend § 555.213(b) to allow shock tube to be stored in a type 4 storage magazine with detonators that will not mass detonate because these materials when stored together do not pose a mass detonation hazard.

The comment period for Notice No. 968, initially scheduled to close on April 29, 2003, was extended until July 7, 2003, pursuant to ATF Notice No. 2 (68 FR 37109, June 23, 2003). ATF received approximately 1,640 comments in response to Notice No. 968. This final rule addresses only one of the subjects included in Notice No. 968, the proposal regarding the storage of shock tube. The remaining proposals made in Notice No. 968 may be addressed separately.

III. Analysis of Comments and Decision

Sixty-one (61) comments addressed ATF's proposal to allow shock tube to be stored in a type 4 storage magazine with detonators that will not mass detonate. One commenter objected to all the proposed amendments in Notice No. 968 and expressed specific concerns with respect to certain proposals. However, the commenter did not specifically address ATF's proposal relating to the storage of shock tube.

Fifty-six (56) commenters offered general support for ATF's proposal, while four commenters expressed specific support for the proposed amendment.

As stated in its comment, the Institute of Makers of Explosives (IME) represents United States manufacturers of explosives, as well as other companies that distribute explosives or provide related services. According to IME, over 2.5 million metric tons of explosives are used annually in the United States, of which IME member companies produce over 95 percent, which have an estimated value in excess of $1 billion annually. IME supported the proposed amendment, stating that it has made several requests to allow shock tube to be stored with detonators, and highlighting the fact that shock tube manufactured with a detonator attached is currently permitted to be stored with detonators.

The Colorado Division of Oil and Public Safety, which is the State of Colorado's regulatory enforcement authority for the manufacturing, sale, transportation, storage, and use of commercial explosives in non-mining related operations, supported the proposed amendment and stated it was "long overdue."

The Alliance of Special Effects & Pyrotechnic Operators, Inc., an organization of special effects professionals who work in motion pictures, television, and on stage, also expressed support for the proposed amendment, characterizing it as "reasonable in view of the nature of shock tubing."

A federally licensed explosives dealer specifically supported the proposed amendment and asserted that it does not pose a safety risk.

Accordingly, this final rule adopts without change the proposed amendment with respect to shock tube.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review section 1(b). The Department of Justice has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and accordingly this rule has not been reviewed by the Office of Management and Budget. This rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, public safety, or State, local, or tribal governments or communities. Accordingly, this rule is not an "economically significant" rulemaking as defined by Executive Order 12866.

Further, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that there will be no financial costs incurred by explosives industry members associated with this final rule. Comments received in response to the notice of proposed rulemaking did not indicate any concern regarding the financial impact of the implementation of this aspect of the proposed rule. The Department believes any financial impact will benefit the explosives industry by reducing the number of explosives magazines used exclusively to store shock tube. The final rule will provide explosives industry members with the option to consolidate detonators and shock tube into fewer explosive storage magazines, therefore alleviating the additional cost of maintaining separate magazines for each explosive product. ATF estimates the average cost for a new type 4 magazine (4 feet x 4 feet x 4 feet) at $3,000. Not only will the final rule reduce the overall cost incurred by industry members because of the requirement to maintain fewer magazines, but explosives industry members will increase savings by decreasing the number of employee-hours spent maintaining magazines that are used solely for the storage of shock tube.

According to the most recent information from the U.S. Bureau of Labor Statistics, explosives workers, ordnance handling experts, and blasters make an average hourly wage of $20.68. ATF estimates that an average of ½ hour per week is spent maintaining each separate magazine. Magazine maintenance includes but is not limited to security, housekeeping, and repairs. ATF estimates that explosives industry members eliminating one magazine will incur an annual yearly savings of approximately $500.

Many non-electric detonators are currently manufactured with shock tube attached as an integral part of the initiation system. ATF has determined that non-mass detonating detonators that are affixed with shock tube as an integral part of the initiation system can be stored in a type 4 magazine, as long

[1] The regulations previously codified in 27 CFR part 55 were designated as part 555 in 2003 in connection with the transfer of ATF to the Department of Justice.

as the explosives remain in a non-mass detonating packaged configuration. This final rule will provide consistency to the enforcement of federal law by allowing individuals or companies to store shock tube with non-mass detonating detonators regardless of whether they were integrated during the manufacturing process. Additionally, ATF has consistently approved variance requests from explosives industry members for the storage of shock tube with non-mass detonating detonators in a type 4 magazine because it does not pose a mass detonation hazard.

Until ATF implements this final rule relating to shock tube, explosives industry members will continue to incur unnecessary costs by not being able to utilize all available storage space in each explosives storage magazine and having to maintain additional magazines. Further, this final rule will alleviate these unnecessary burdens on individuals or businesses wishing to establish new explosives companies. ATF believes this final rule will provide current and future explosives industry members with greater flexibility in their explosives storage operations without mandating costly changes in their current or proposed operating procedures.

B. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) 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. The Attorney General has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Individuals or companies storing shock tube will not be affected adversely by this final rule because it allows these entities to voluntarily make modifications to their current explosive operations. There will be no mandated changes as a result of this final rule. Therefore, any costs associated with the implementation of the final rule will be incurred at the discretion of each individual explosives industry member.

Since 2004, there have been 24 instances in which explosives industry members were storing shock tube in the same magazine with detonators, which is currently a violation of the federal explosives regulations. Those 24 instances involved a total of approximately 470,650 feet of shock tube. Twenty of the 24 instances involved companies that ATF would classify as small- or medium-sized businesses. In each instance, the explosives industry member was required to utilize employee-hours to move the shock tube into another magazine. Of these 20 small- or medium-sized companies, 4 were required to attend a warning conference with ATF officials and 6 received an ATF recall inspection, in part because of the violation received for the improper storage of shock tube with detonators. Each industry member was required to dedicate company resources, including employee work hours, to attend the required meetings or be present during another ATF inspection.

As mentioned earlier in the preamble, the most recent information from the U.S. Bureau of Labor Statistics, explosives workers, ordnance handling experts, and blasters make an average hourly wage of $20.68. The final rule will eliminate the need for small- or medium-sized entities to utilize employee hours during warning conferences and recall inspections that are initiated as a result of these industry members storing shock tube and detonators in the same magazine.

Until ATF implements this final rule with respect to shock tube, explosives industry members, including small-sized explosives companies, will continue to incur costs associated with the unnecessary movement and separate storage requirements of shock tube due to current explosive regulations. Further, implementation of this final rule will alleviate these unnecessary burdens on individuals or businesses wishing to establish new explosives companies, some of which will be small entities. ATF believes this final rule will provide current and future explosives industry members with greater flexibility in their explosives storage operations without mandating costly changes in their current or proposed operating procedures.

E. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

G. Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Disclosure

Copies of the notice of proposed rulemaking, all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reading Room, Room 1E–063, 99 New York Avenue, NE., Washington, DC 20226; telephone: (202) 648–7080.

Drafting Information

The author of this document is James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and

forfeitures, Transportation, and Warehouses.

Authority and Issuance

■ Accordingly, for the reasons discussed in the preamble, 27 CFR Part 555 is amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR Part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 555.213 [Amended]

■ 2. Section 555.213 is amended by adding "shock tube," after "safety fuse," in paragraph (b)(1).

Dated: January 13, 2010.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2010–891 Filed 1–19–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AN13

Vocational Rehabilitation and Employment Program—Basic Entitlement; Effective Date of Induction Into a Rehabilitation Program; Cooperation in Initial Evaluation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Vocational Rehabilitation and Employment Program regulations of the Department of Veterans Affairs (VA). Specifically, it amends provisions concerning: Individuals' basic entitlement to vocational rehabilitation benefits and services; effective dates of induction into a rehabilitation program, including retroactive induction; and individuals' cooperation and lack of cooperation in the initial evaluation process. The amendments are intended to update pertinent regulations to reflect changes in law, to provide VA's interpretation of applicable law, and to improve clarity.

DATES: *Effective Date:* This final rule is effective February 19, 2010.

Applicability Dates: Except as noted in the Supplementary Information section, the provisions of this final rule apply to claims pending on February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9613.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on May 8, 2009 (74 FR 21565), we proposed to amend VA's vocational rehabilitation and employment regulations. We provided a 60-day comment period for the proposed rule that ended on July 7, 2009. We received no comments.

In 38 CFR part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31, we are revising § 21.40 concerning basic entitlement to vocational rehabilitation benefits and services; § 21.282 concerning effective dates of induction into a rehabilitation program; and § 21.50(d) concerning cooperation and lack of cooperation in the initial evaluation process. VA previously addressed and implemented changes to services provided under 38 U.S.C. chapter 31, which resulted from a court decision and the enactment of Public Law 104–275, the Veterans Benefits Improvement Act of 1996. This included VA's issuance of Circular 28–97–1 in 1997 (last revised in October 2004) to provide guidance regarding the implementation of these changes. This final rule will update 38 CFR part 21 consistent with current practice. In addition, the final rule will make other non-substantive changes.

Basic Entitlement to Vocational Rehabilitation Benefits and Services

We are revising § 21.40 to include criteria, effective October 1, 1993, for vocational rehabilitation basic entitlement determinations resulting from the Veterans' Benefits Act of 1992 (Pub. L. 102–568), enacted October 29, 1992. Public Law 102–568 amended 38 U.S.C. 3102(2) to entitle veterans to vocational rehabilitation if they have a 10 percent service-connected disability and are determined by the Secretary of Veterans Affairs to be in need of rehabilitation due to a serious employment handicap. Further, the changes to § 21.40 are intended to reflect the provisions of section 602(c) of the Veterans Benefits Improvement Act of 1994 (Pub. L. 103–446), which amended section 404(b) of Public Law 102–568 with a technical correction, effective October 29, 1992. This rule prescribes basic entitlement to vocational rehabilitation if they have a 10 percent service-connected disability, they originally applied for assistance under 38 U.S.C. chapter 31 before November 1, 1990, and VA determines they need rehabilitation because of an employment handicap.

Effective Dates of Induction Into a Rehabilitation Program, Including Retroactive Induction

In § 21.282, we address the decision of the United States Court of Appeals for Veterans Claims (then the United States Court of Veterans Appeals) in *Bernier* v. *Brown,* 7 Vet. App. 434 (1995), concerning effective dates for retroactive induction into a program of rehabilitation benefits and services. The *Bernier* decision set aside two provisions of current § 21.282 that limited retroactive induction into programs of rehabilitation benefits and services under 38 U.S.C. chapter 31. Under revised § 21.282, VA will be able to retroactively approve a period of training that occurred within an individual's period of eligibility under 38 CFR 21.41 through 21.46, beginning on the effective date of entitlement to disability compensation, provided that the individual met the criteria for entitlement to chapter 31 benefits and services for that period. VA must determine that the training and other rehabilitative services that the individual received during the period of retroactive induction were reasonably needed to achieve the planned goals and objectives identified for that individual. If the individual received other VA-administered education benefits during any portion of that period, VA must offset the previous education benefits received against the payment of chapter 31 vocational rehabilitation benefits for the same period.

We are revising § 21.282(b) and (c) to clarify when an individual on active duty can qualify for retroactive induction and when the conditions for retroactive induction may apply to both veterans and servicemembers. For servicemembers, the period of retroactive induction must be within a period under § 21.40(c) during which a servicemember was awaiting discharge for disability. In § 21.282(b), we are clarifying that if an individual is retroactively inducted into a rehabilitation program, VA may authorize payment of tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with the approved rehabilitation program. Section 21.282(b) will also authorize VA payment of subsistence allowance for the period of retroactive induction, except for any period during which the individual was on active duty. We are amending § 21.282(c) to comply with pertinent statutory authorities by stating the conditions that must be met before an individual may

be inducted into a rehabilitation program on a retroactive basis.

In response to the invalidation of the language in current § 21.282(c) in *Bernier,* we will state in § 21.282(d) that the effective date for retroactive induction is the date on which all the entitlement conditions set forth in § 21.282(c) are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating establishing a qualifying level of service-connected disability under § 21.40.

Cooperation and Lack of Cooperation in the Initial Evaluation Process

In the **Federal Register** of March 26, 2007 (72 FR 14041), VA published amendments to several sections in 38 CFR part 21, including § 21.50. We are revising § 21.50(d) to reflect VA's determination of appropriate procedures and to clarify the action VA will take if an individual fails to cooperate with the counseling psychologist or vocational rehabilitation counselor in the initial evaluation process. Section 21.50(d) provides that if an individual does not cooperate, even after reasonable attempts are made to secure cooperation, VA will suspend the initial evaluation process and that individual will not be considered inducted into a rehabilitation program. Section 21.50(d) will also include references to §§ 21.632 and 21.634 regarding satisfactory and unsatisfactory conduct and cooperation.

For the reasons stated above and as stated in the notice of proposed rulemaking, VA adopts the proposed rule as a final rule without change.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

The program that this rule will affect has the following Catalog of Federal Domestic Assistance number and title: 64.116, Vocational Rehabilitation for Disabled Veterans.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 30, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subpart A) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

■ 1. Revise the authority citation for part 21, subpart A to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

■ 2. The subpart A heading is revised as set forth above.

■ 3. Revise the undesignated center heading immediately preceding § 21.40 and that section to read as follows:

Entitlement

§ 21.40 Basic entitlement to vocational rehabilitation benefits and services.

An individual meets the basic entitlement criteria for vocational rehabilitation benefits and services under this subpart if VA determines that he or she meets the requirements of paragraph (a), (b), (c), or (d) of this section. For other requirements affecting the provision of vocational rehabilitation benefits and services, *see* §§ 21.41 through 21.46 (period of eligibility), § 21.53 (reasonable feasibility of achieving a vocational goal), and §§ 21.70 through 21.79 (months of entitlement).

(a) *Veterans with at least 20 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated 20 percent or more under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

(b) *Veterans with 10 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated less

than 20 percent under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of a serious employment handicap.

(c) *Servicemembers awaiting discharge.* The individual is a servicemember who, while waiting for discharge from the active military, naval, or air service, is hospitalized, or receiving outpatient medical care, services, or treatment, for a disability that VA will likely determine to be service-connected. In addition, VA must have determined that:

(1) The hospital or other medical facility providing the hospitalization, care, service, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned;

(2) The individual is in need of rehabilitation because of an employment handicap; and

(3) The individual has a disability or combination or disabilities that will likely be:

(i) At least 10 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; or

(ii) At least 20 percent compensable under 38 U.S.C. chapter 11 and he or she originally applied for assistance under 38 U.S.C. chapter 31 on or after November 1, 1990.

(d) *Exception for veterans who first applied after March 31, 1981, and before November 1, 1990.* The individual is a veteran who:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11;

(2) Originally applied for assistance under 38 U.S.C. chapter 31 after March 31, 1981, and before November 1, 1990; and

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

Authority: 38 U.S.C. ch. 11, 3102, 3103, 3106; sec. 8021(b), Pub. L. 101–508, 104 Stat. 1388–347; sec. 404(b), Pub. L. 102–568, 106 Stat. 4338, as amended by sec. 602, Pub. L. 103–446, 108 Stat. 4671.

■ 4. In §§ 21.42 and 21.47, remove "§ 21.40(a)" each place that it appears and add, in its place, "§ 21.40".

■ 5. Revise § 21.50(d) to read as follows:

§ 21.50 Initial evaluation.

* * * * *

(d) *Need for cooperation in the initial evaluation process.* The individual's cooperation is essential in the initial evaluation process. If the individual does not cooperate, the CP or VRC will make reasonable efforts to secure the individual's cooperation. If, despite those efforts, the individual fails to cooperate, VA will suspend the initial evaluation process (*see* § 21.362, regarding satisfactory conduct and cooperation, and § 21.364, regarding unsatisfactory conduct and cooperation).

Authority: 38 U.S.C. 3111.

■ 6. Revise the undesignated center heading immediately preceding § 21.282 and that section to read as follows:

Induction into a Rehabilitation Program

§ 21.282 Effective date of induction into a rehabilitation program; retroactive induction.

(a) *Entering a rehabilitation program.* The effective date of induction into a rehabilitation program is governed by the provisions of §§ 21.320 through 21.334, except as provided in this section.

Authority: 38 U.S.C. 3108, 5113.

(b) *Retroactive induction.* Subject to paragraphs (c) and (d) of this section, an individual may be inducted into a rehabilitation program on a retroactive basis. If the individual is retroactively inducted, VA may authorize payment pursuant to § 21.262 or § 21.264 for tuition, fees, and other verifiable expenses that an individual paid or incurred consistent with the approved rehabilitation program. In addition, VA may authorize payment of subsistence allowance pursuant to §§ 21.260, 21.266, and 21.270 for the period of retroactive induction, except for any period during which the individual was on active duty.

Authority: 38 U.S.C. 3108, 3113, 3681, 5113.

(c) *Conditions for retroactive induction.* Retroactive induction into a rehabilitation program may be authorized for a past period under a claim for vocational rehabilitation benefits when all of the following conditions are met:

(1) The past period is within—

(i) A period under § 21.40(c) during which a servicemember was awaiting discharge for disability; or

(ii) A period of eligibility under §§ 21.41 through 21.44 or 38 U.S.C. 3103.

(2) The individual was entitled to disability compensation under 38 U.S.C. chapter 11 during the period or would likely have been entitled to that compensation but for active-duty service.

(3) The individual met the criteria for entitlement to vocational rehabilitation benefits and services under 38 U.S.C. chapter 31 in effect during the period.

(4) VA determines that the individual's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the individual and may be included in the plan developed for the individual (*see* §§ 21.80 through 21.88, and §§ 21.92 through 21.98).

(5) VA has recouped any benefits that it paid the individual for education or training pursued under any VA education program during any portion of the period.

(6) An initial evaluation was completed under § 21.50.

(7) A period of extended evaluation is not needed to be able to determine the reasonable feasibility of the achievement of a vocational goal.

Authority: 38 U.S.C. 3102, 3103, 3108, 5113.

(d) *Effective date for retroactive induction.* The effective date for retroactive induction is the date when all the entitlement conditions set forth in paragraph (c) of this section are met, and for a veteran (except as to a period prior to discharge from active duty) in no event before the effective date of a VA rating under 38 U.S.C. chapter 11 establishing a qualifying level under § 21.40 of service-connected disability.

Authority: 38 U.S.C. 5113.

[FR Doc. 2010–886 Filed 1–19–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AM84

Vocational Rehabilitation and Employment Program—Periods of Eligibility

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts without change the proposed rule published in the **Federal Register** on March 9, 2009, amending regulations of the Department of Veterans Affairs (VA) concerning periods of eligibility applicable to VA's provision of

Vocational Rehabilitation and Employment benefits and services. The amendments clarify program requirements, interpret and incorporate new statutory requirements, and make clarifying non-substantive changes.

DATES: *Effective Date:* This final rule is effective February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9613.

SUPPLEMENTARY INFORMATION: On March 9, 2009, VA published a proposed rule in the **Federal Register** (74 FR 9975). We proposed to amend VA's regulations in 38 CFR Part 21, Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31. The amendments in the proposed rule concerned periods of eligibility applicable to VA's provision of Vocational Rehabilitation and Employment (VR&E) benefits and services.

VA provided a 60-day comment period for the proposed rule that ended May 8, 2009. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Specifically, in 38 CFR 21.41, we are clarifying the term "basic period of eligibility." We are revising § 21.42 to clarify who is authorized to determine that a veteran's participation in a vocational rehabilitation program is reasonably feasible and when a basic period of eligibility would begin or resume. We are revising § 21.44 to more clearly state the length of time that an extension of the basic period of eligibility for a veteran with a serious employment handicap may be granted. Section 21.45 is being revised to clearly state the length of extension of the basic period of eligibility for a veteran in a program of independent living services. Finally, we are adding a new § 21.46 to reflect and interpret an amendment to 38 U.S.C. 3103 that extends the period of eligibility for a veteran who VA determines "was prevented from participating" in a vocational rehabilitation program because the veteran was recalled to active duty.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

The program that this final rule will affect has the following Catalog of Federal Domestic Assistance number and title: 64.116, Vocational Rehabilitation for Disabled Veterans.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 8, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subpart A) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

■ 1. Revise the authority citation for part 21, subpart A to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

■ 2. Revise the subpart A heading as set forth above.

■ 3. Revise §§ 21.41, 21.42, 21.44, and 21.45 to read as follows:

§ 21.41 Basic period of eligibility.

(a) *Time limit for eligibility to receive vocational rehabilitation.* (1) For purposes of §§ 21.41 through 21.46, the term *basic period of eligibility* means the 12-year period beginning on the date of a veteran's discharge or release from his or her last period of active military, naval, or air service, and ending on the date that is 12 years from the veteran's discharge or release date, but the beginning date may be deferred or the ending date extended under the sections referred to in paragraph (b) of this section. (*See* §§ 21.70 through 21.79 concerning duration of rehabilitation programs.)

(2) Except as provided in paragraph (b) or (c) of this section, the period during which an individual may receive a program of vocational rehabilitation

benefits and services under 38 U.S.C. chapter 31 is limited to his or her basic period of eligibility.

(b) *Deferral and extension of the basic period of eligibility.* VA may defer the beginning date of a veteran's basic period of eligibility under § 21.42. VA may extend the ending date of a veteran's basic period of eligibility under § 21.42 (extension due to medical condition); § 21.44 (extension for a veteran with a serious employment handicap), § 21.45 (extension during a program of independent living services and assistance), and § 21.46 (extension for a veteran recalled to active duty).

(Authority: 38 U.S.C. 3103)

(c) *Servicemember entitled to vocational rehabilitation services and assistance before discharge.* The basic period of eligibility for a servicemember who is entitled to vocational rehabilitation services and assistance under 38 U.S.C. chapter 31 for a period before discharge does not run while the servicemember remains on active duty, but begins on the date of discharge from the active military, naval, or air service. The period of eligibility requirements of this section are not applicable to provision of vocational rehabilitation services and assistance under chapter 31 during active duty.

(Authority: 38 U.S.C. 3102, 3103)

§ 21.42 Deferral or extension of the basic period of eligibility.

The basic period of eligibility does not run as long as any of the following reasons prevents the veteran from commencing or continuing a vocational rehabilitation program:

(a) *Qualifying compensable service-connected disability(ies) not established.* The basic period of eligibility does not commence until the day VA notifies a veteran of a rating determination by VA that the veteran has a qualifying compensable service-connected disability under § 21.40.

(Authority: 38 U.S.C. 3103(b)(3))

(b) *Character of discharge is a bar to benefits.*

(1) The basic period of eligibility does not commence until the veteran meets the requirement of a discharge or release under conditions other than dishonorable. (For provisions regarding character of discharge, see § 3.12 of this chapter.)

(2) If VA has considered a veteran's character of discharge to be a bar to benefits, the basic period of eligibility commences only when one of the following happens:

(i) An appropriate authority changes the character of discharge or release; or

(ii) VA determines that the discharge or release was under conditions other than dishonorable or that the discharge or release was, but no longer is, a bar to benefits.

(3) If there is a change in the character of discharge, or the discharge or release otherwise is determined, as provided in paragraph (b)(2) of this section, not to be a bar to benefits, the beginning date of the basic period of eligibility will be the effective date of the change or VA determination.

(Authority: 38 U.S.C. 3103(b)(2))

(c) *Commencement or continuation of participation prevented by medical condition(s).*

(1) The basic period of eligibility does not run during any period when a veteran's participation in a vocational rehabilitation program is determined to be infeasible for 30 days or more because of any medical condition(s) of the veteran, including the disabling effects of chronic alcoholism (see paragraphs (c)(2) through (c)(5) of this section).

(2) For purposes of this section, the term *disabling effects of chronic alcoholism* means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations that:

(i) Have been diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Have been determined to prevent the affected veteran from beginning or continuing in a program of vocational rehabilitation and employment.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, or chronic alcohol abuse, in and of itself, does not satisfy the definition of disabling effects of chronic alcoholism.

(4) Injuries sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication are not considered disabling effects of chronic alcoholism. An injury itself, however, may prevent commencement or continuation of a rehabilitation program.

(5) For purposes of this section, after November 17, 1988, the disabling effects of chronic alcoholism do not constitute willful misconduct. See 38 U.S.C. 105(c).

(6) If the basic period of eligibility is delayed or interrupted under this paragraph (c) due to any medical condition(s) of the veteran, it will begin or resume on the date a Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) notifies the veteran in writing that the CP or VRC has determined, based on the evidence of record, that participation in a vocational rehabilitation program is reasonably feasible for the veteran.

(Authority: 38 U.S.C. 3103(b)(1))

§ 21.44 Extension of the basic period of eligibility for a veteran with a serious employment handicap.

(a) *Conditions for extension.* A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the basic period of eligibility of a veteran with a serious employment handicap when the veteran's current employment handicap and need for rehabilitation services and assistance necessitate an extension under the following conditions:

(1) *Not rehabilitated to the point of employability.* The veteran has not been rehabilitated to the point of employability; or

(Authority: 38 U.S.C. 3103(c))

(2) *Rehabilitated to the point of employability.* The veteran was previously declared rehabilitated to the point of employability, but currently meets one of the following three conditions:

(i) One or more of the veteran's service-connected disabilities has worsened, preventing the veteran from working in the occupation for which he or she trained, or in a related occupation;

(ii) The veteran's current employment handicap and capabilities clearly show that the occupation for which the veteran previously trained is currently unsuitable; or

(iii) The occupational requirements in the occupation for which the veteran trained have changed to such an extent that additional services are necessary to enable the veteran to work in that occupation, or in a related field.

(Authority: 38 U.S.C. 3103(c))

(b) *Length of eligibility extension.* For a veteran with a serious employment handicap, a CP or VRC may extend the basic period of eligibility for such additional period as the CP or VRC determines is needed for the veteran to accomplish the purposes of his or her individualized rehabilitation program.

(Authority: 38 U.S.C. 3103(c))

§ 21.45 Extending the period of eligibility for a program of independent living beyond basic period of eligibility.

A Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) may extend the period of eligibility for a veteran's program of

independent living services beyond the veteran's basic period of eligibility if the CP or VRC determines that an extension is necessary for the veteran to achieve maximum independence in daily living. The extension may be for such period as the CP or VRC determines is needed for the veteran to achieve the goals of his or her program of independent living. (*See* § 21.76(b) concerning duration of independent living services.)

(Authority: 38 U.S.C. 3103(d))

■ 4. Add § 21.46 to read as follows:

§ 21.46 Veteran ordered to active duty; extension of basic period of eligibility.

If VA determines that a veteran is prevented from participating in, or continuing in, a program of vocational rehabilitation as a result of being ordered to active duty under 10 U.S.C. 688, 12301(a), 12301(d), 12301(g), 12302, or 12304, the veteran's basic period of eligibility will be extended by the length of time the veteran serves on active duty plus 4 months.

(Authority: 38 U.S.C. 3103(e); sec. 308(h), Pub. L. 107–330, 116 Stat. 2829)

[FR Doc. 2010–879 Filed 1–19–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AN31

Vocational Rehabilitation and Employment Program—Self-Employment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the vocational rehabilitation and employment regulations of the Department of Veterans Affairs (VA) concerning self-employment for individuals with qualifying disabilities. We are making changes to conform VA's regulations for self-employment programs for veterans, and for servicemembers awaiting discharge, to statutory provisions, including provisions limiting eligibility for certain supplies, equipment, stock, and license fees to individuals with the most severe service-connected disabilities. We are also making related changes in VA's regulations affecting eligibility for such assistance for certain veterans' children with birth defects in self-employment programs. In addition, we are amending our regulations regarding the approval authority for self-employment plans to make certain requirements less restrictive and less burdensome, to remove a vague and overly broad requirement, to make changes to reflect longstanding VA policy, and to make nonsubstantive clarifying changes.

DATES: *Effective Date:* This final rule is effective February 19, 2010.

Applicability Dates: Except as noted in the Supplementary Information section, this final rule applies to claims pending on or after February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Alvin Bauman, Senior Policy Analyst, Vocational Rehabilitation and Employment Service (28), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–9613 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 28, 2009 (74 FR 19164), we proposed to amend VA's regulations concerning self-employment in 38 CFR part 21 that are applicable to benefits and services under 38 U.S.C. chapter 31, Training and Rehabilitation for Veterans with Service-Connected Disabilities, and 38 U.S.C. chapter 18, Benefits for Children of Vietnam Veterans and Certain Other Veterans. We provided a 60-day comment period that ended on June 29, 2009. We received comments from one individual in support of the proposed changes. Consequently, we make no changes based on the commenter's submission.

The Veterans' Benefits Act of 1996, Public Law 104–275 (enacted October 9, 1996), amended 38 U.S.C. 3104(a)(12) regarding the special assistance and supplies that VA can provide for individuals pursuing self-employment programs. Prior to the enactment of Public Law 104–275, only "the most severely disabled" individuals who required self-employment were, under 38 CFR 21.258, entitled to the special supplies, equipment, stock, and license fees described in 38 CFR 21.214(e). Public Law 104–275 amended 3104(a)(12) by restricting the provision of those special supplies, equipment, stock, and license fees to individuals "with the most severe service-connected disabilities who require homebound training or self employment." VA implemented the statutory amendments upon enactment but until this rulemaking did not incorporate them in VA's regulations. This rule conforms VA's regulations to the statutory provisions and prescribes (in § 21.257 rather than current § 21.258) criteria for providing such special supplies, equipment, stock, and license fees for individuals who require self-employment.

We are revising some of the requirements under § 21.254 pertaining to a service-disabled veteran trained for self-employment under a State rehabilitation agency. We are eliminating the burdensome and restrictive requirement under § 21.254 for certification by an official of the State rehabilitation agency with responsibility for administration of self-employment programs. Instead, we are listing the conditions under which an individual who has trained for self-employment under a State rehabilitation agency may be provided special supplies, equipment, stock, and license fees if there is a VA determination that the qualifying criteria are met.

In addition, we are eliminating the requirement currently in § 21.254 that, prior to authorization of any supplies, the Director, Vocational Rehabilitation and Education (VR&E) Service, must approve the request if the cost of supplies is more than $2,500.

We are amending the criteria for approval of self-employment as a vocational goal for an individual. Current § 21.257(a) is overly restrictive because it maintains that self-employment is only available to an individual if access to the normal channels for suitable employment is limited by his or her disability(ies). Current § 21.257(b) is vague because it does not specify what other circumstances in the individual's situation warrant consideration of self-employment. Self-employment as a mode of employment is authorized for all program participants for whom it is deemed appropriate for achieving rehabilitation. We are revising § 21.257 to remove the above-referenced restriction on authorizing self-employment as a suitable vocational goal and to limit consistent with the amendment to section 3104(a)(12) the self-employment special assistance under 38 CFR 21.214(e) to "individuals with the most severe service-connected disability(ies) who require self-employment."

The approval requirement of costs related to self-employment programs is in accordance with 38 U.S.C. 3104(a)(12). We are amending § 21.258 to reflect existing VA policy that requires approval of costs of the provision of special supplies, equipment, stock, and license fees for self-employment programs. Section 21.258 will require that a self-employment plan having an actual or estimated cost of $25,000 or more must be approved by the Director, VR&E Service.

Many of the amendments to 38 CFR part 21, subpart A, in this final rule are

also applicable to the vocational rehabilitation program under 38 U.S.C. chapter 18 regarding benefits for children of Vietnam veterans and certain other veterans (see 38 CFR part 21, subpart M). In subpart M, §§ 21.8020, 21.8210, and 21.8380 provide for the applicability of §§ 21.214, 21.254, 21.256, 21.257, 21.258, and 21.430 in a manner comparable to their application for a veteran under the chapter 31 program. Accordingly, we are amending § 21.8020 to clarify how we will apply § 21.257 to the provision of services and assistance under subpart M in a manner that we consider to be comparable to its application for a veteran under the 38 U.S.C. chapter 31 program. Under § 21.8020, an individual who has been determined to have limitations affecting employability arising from the effects of the individual's spina bifida or other covered birth defects, which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual, will also be deemed to have met the requirements for application of § 21.257(e)(1) and (2). We are making a related clarifying change in § 21.8020(d), intended to remove the possible implication that self-employment is not among the employment options for a participant's program under subpart M.

This final rule conforms VA's regulations to the provisions of 38 U.S.C. 3104(a)(12), as amended, and regarding those provisions is applicable to claims pending on or after the effective date of the amendments, October 9, 1996.

For the reasons stated above and in the notice of proposed rulemaking, the proposed rule is adopted as a final rule without change.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a regulatory action as a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, if it is a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs that will be affected by this final rule are 64.116, Vocational Rehabilitation for Disabled Veterans; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Defects.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 30, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subparts A and M) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

■ 1. Revise the authority citation for part 21, subpart A to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

■ 2. Revise the subpart A heading as set forth above.

■ 3. Amend § 21.214 by:
■ a. In paragraph (e) introductory text, removing "services" and adding, in its place, "related assistance" and removing "§ 21.258" and adding, in its place, "§§ 21.257 and 21.258".
■ b. In paragraph (e)(3), removing "incidental services" and adding, in its place, "related assistance".
■ c. Revising the authority citation for paragraph (e).

The revision reads as follows:

§ 21.214 Furnishing supplies for special programs.

* * * * *

(Authority: 38 U.S.C. 3104(a)(12))

* * * * *

■ 4. In § 21.254, revise paragraph (c) to read as follows:

§ 21.254 Supportive services.

* * * * *

(c) *Individuals with service-connected disability(ies) trained for self-employment under a State rehabilitation agency.* An individual with service-connected disability(ies) who has trained for self-employment under a State rehabilitation agency may be provided supplemental equipment and initial stocks and supplies similar

to the materials supplied under 38 U.S.C. chapter 31 to individuals with the most severe service-connected disability(ies) who require self-employment as defined in § 21.257(b) if VA determines that the following conditions are met:

(1) The individual is eligible for employment assistance under the provisions of § 21.47;

(2) Evidence of record indicates that the individual has successfully completed training for a self-employment program under a State rehabilitation agency;

(3) No other non-VA sources of assistance are known to be available for the individual to complete his or her self-employment program; and

(4) The individual meets the requirements of the definition in § 21.257(b).

(Authority: 38 U.S.C. 3104, 3117(b)(2))

■ 5. Revise § 21.257 to read as follows:

§ 21.257 Self-employment.

(a) *Approval of self-employment as a vocational goal.* A program of vocational rehabilitation benefits and services may include self-employment for an individual if VA determines that such an objective is a suitable vocational goal. VA will make this determination based on—

(1) The results of the individual's initial evaluation conducted in accordance with the provisions of § 21.50; and

(2) The provisions of this section.

(Authority: 38 U.S.C. 3104(a))

(b) *Definition.* For purposes of this subpart, *individuals with the most severe service-connected disability(ies) who require self-employment* means individuals who have been determined by VA to have limitations affecting employability arising from the effects of each individual's service-connected disability(ies), which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individuals.

(Authority: 38 U.S.C. 3104)

(c) *Scope of self-employment benefits and services.*

(1) VA may provide the self-employment services listed in paragraph (d) of this section to program participants who are pursuing the vocational goal of self-employment.

(2) VA may provide the more extensive services listed in paragraph (e) of this section to individuals with the most severe service-connected disability(ies) who require self-employment.

(Authority: 38 U.S.C. 3104(a))

(d) *Assistance for other individuals in self-employment.* Subject to the provisions of § 21.258, VA may provide the following assistance to any individual for whom self-employment is determined to be a suitable vocational goal—

(1) Vocational training;

(2) Incidental training in the management of a business;

(3) License or other fees required for self-employment;

(4) Necessary tools and supplies for the occupation; and

(5) Services described in § 21.252.

(Authority: 38 U.S.C. 3104(a))

(e) *Special self-employment services for individuals with the most severe service-connected disability(ies) who require self-employment.* Individuals described in paragraph (b) of this section who are in a self-employment program may receive—

(1) The services described in paragraph (d) of this section; and

(2) The assistance described in § 21.214.

(Authority: 38 U.S.C. 3104, 3116, 3117)

(f) *Feasibility analysis of a proposed self-employment business plan.* VA will conduct a comprehensive review and analysis of the feasibility of a proposed business plan, as submitted by the individual or developed with VA's assistance, prior to authorizing a rehabilitation plan leading to self-employment (a "self-employment plan"). The feasibility analysis must include—

(1) An analysis of the economic viability of the proposed business;

(2) A cost analysis specifying the amount and types of assistance that VA will provide;

(3) A market analysis for the individual's proposed services or products;

(4) Availability of financing from non-VA sources, including the individual's personal resources, local banks, and other sources;

(5) Evidence of coordination with the Small Business Administration to secure special consideration under section 8 of the Small Business Act, as amended;

(6) The location of the site for the proposed business and the cost of the site, if any; and

(7) A training plan to operate a successful business.

(Authority: 38 U.S.C. 3104)

■ 6. Section 21.258 is revised to read as follows:

§ 21.258 Cost limitations on approval of self-employment plans.

A self-employment plan with an estimated or actual cost of less than $25,000 may be approved by the VR&E Officer with jurisdiction. Any self-employment plan with an estimated or actual cost of $25,000 or more must be approved by the Director, VR&E Service.

(Authority: 38 U.S.C. 3104)

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

■ 7. The authority citation for part 21, subpart M continues to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

■ 8. Amend § 21.8020 by:

■ a. Revising paragraph (b).

■ b. In paragraph (d), removing "obtains a suitable job" and adding, in its place, "becomes suitably employed".

The revision reads as follows:

§ 21.8020 Entitlement to vocational training and employment assistance.

* * * * *

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a).

(1) The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

(i) Section 21.250(a) and (b)(2);

(ii) Section 21.252;

(iii) Section 21.254;

(iv) Section 21.256 (not including paragraph (e)(2));

(v) Section 21.257; and

(vi) Section 21.258.

(2) For purposes of this subpart, the requirements for application of § 21.257(e)(1) and (2) are deemed met for an individual in a self-employment program regardless of whether the individual is described in § 21.257(b), if the individual has been determined by VA to have limitations affecting employability arising from the effects of the individual's spina bifida and/or other covered birth defect(s) which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual.

(Authority: 38 U.S.C. 1804, 1814)

* * * * *

[FR Doc. 2010–882 Filed 1–19–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

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) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Assistant Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final 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.

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

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

Executive Order 12988, Civil Justice Reform. This final 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 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended 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) Modified
City of Fort Yukon, Alaska Docket No.: FEMA–B–1029				
Alaska	City of Fort Yukon	Yukon River	Static BFE approximately 198 feet south/southeast of the intersection of 1st Avenue and Husky Avenue.	+445
			Static BFE at the intersection of the Yukon River and Airport Road.	+445

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

City of Fort Yukon
Maps are available for inspection at East 7th Street, Fort Yukon, AK 99740.

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) Modified
City of Togiak, Alaska Docket No.: FEMA–B–1029				
Alaska	City of Togiak	Togiak Bay	Static BFE approximately 2,427 feet southwest of the southwest end of Togiak Airport.	+8
			Static BFE at the intersection of the Limit of Detailed Study and the shoreline.	+8

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

City of Togiak
Maps are available for inspection at 2nd Avenue and G Street, Togiak, AK 99678.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Local Tidal Datum (LTD) Modified	Communities affected
Lake and Peninsula Borough, Alaska, and Incorporated Areas Docket No.: FEMA–B–1029			
Chignik Lake	Entire shoreline	∧16	Lake and Peninsula Borough.

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Local Tidal Datum.

ADDRESSES

Lake and Peninsula Borough
Maps are available for inspection at P.O. Box 495, King Salmon, AK 99613.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified	Communities affected
Washington County, Minnesota, and Incorporated Areas Docket No.: FEMA–B–7768			
10th Street Basin	Entire shoreline	+885	City of Afton.
10th Street and Neal Avenue Basin.	Entire shoreline	+867	City of Afton.
8th Street Basin	Entire shoreline	+880	City of Afton.
Barker Lake	Entire shoreline	+891	City of Hugo, Unincorporated Areas of Washington County.
Bay Lake	Entire shoreline	+891	Unincorporated Areas of Washington County.
Cloverdale Lake	Entire shoreline	+907	Unincorporated Areas of Washington County.
East Boot Lake	Entire shoreline	+920	Unincorporated Areas of Washington County.
Fish Lake	Entire shoreline	+954	City of Scandia.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) Modified	Communities affected
Forest Lake	Entire shoreline	+903	City of Forest Lake.
Freidrich Pond	Entire shoreline	+913	City of Lake Elmo.
German Lake	Entire shoreline	+959	City of Scandia.
Klawitter Pond	Entire shoreline	+963	City of Lake Elmo.
Kramer Pond	Entire shoreline	+914	City of Lake Elmo.
Legion Pond	Entire shoreline	+889	City of Lake Elmo.
Maple Marsh	Entire shoreline	+975	Unincorporated Areas of Washington County.
McDonald Lake	Entire shoreline	+892	Unincorporated Areas of Washington County.
Mississippi River	Approximately 1,850 feet upstream of southern county boundary.	+691	City of Cottage Grove, City of Hastings, City of Newport, City of St. Paul Park, Unincorporated Areas of Washington County.
	Approximately 1,200 feet downstream of southern county boundary.	+704	
Mooers Lake Channel	At the convergence with the Mississippi River	+697	City of Cottage Grove, Unincorporated Areas of Washington County.
	Just downstream of Grey Cloud Island Drive South	+697	
Raleigh Creek	Approximately 180 feet upstream of the confluence with Lake Elmo.	+899	City of Lake Elmo, City of Oakdale.
	Approximately 845 feet upstream of 31st Street North	+975	
Silver Lake	Entire shoreline	+991	City of Oakdale.
South Branch	At the confluence with Clearwater Creek	+910	City of Hugo.
Clearwater Creek	Approximately 950 feet upstream of the confluence with Clearwater Creek.	+911	
St. Croix River	Approximately 16,265 feet downstream of the confluence with Interstate 94.	+692	Unincorporated Areas of Washington County, City of Afton, City of Bayport, City of Lake St. Croix Beach, City of Lakeland, City of Lakeland Shores, City of Marine on St. Croix, City of Oak Park Heights, City of St. Mary's Point, City of Stillwater.
	Approximately 23,050 feet downstream of SOO Line Railroad.	+698	
Staples Lake	Entire shoreline	+950	Unincorporated Areas of Washington County.
Sunfish Lake	Entire shoreline	+899	City of Lake Elmo.
Tingley Springs	Entire shoreline	+931	City of Hugo.
Unnamed Wetland (DNR ID No. 82015600).	Entire shoreline	+962	City of Hugo, City of Forest Lake.
Unnamed Wetland (DNR ID No. 82016500).	Entire shoreline	+964	City of Forest Lake.
Unnamed Wetland (DNR ID No. 82021200).	Entire shoreline	+965	City of Forest Lake, City of Scandia.
Unnamed Wetland (DNR ID No. 82021300).	Entire shoreline	+966	City of Scandia.
Unnamed Wetland (DNR ID No. 82021600).	Entire shoreline	+936	City of Forest Lake, City of Hugo.
Unnamed Wetland (DNR ID No. 82022000).	Entire shoreline	+958	City of Forest Lake, City of Hugo.
Unnamed Wetland (DNR ID No. 82022100).	Entire shoreline	+940	City of Hugo.
Unnamed Wetland (DNR ID No. 82022200).	Entire shoreline	+948	City of Hugo.
Unnamed Wetland (DNR ID No. 82022300).	Entire shoreline	+983	Unincorporated Areas of Washington County, City of Hugo.
Unnamed Wetland (DNR ID No. 82022400).	Entire shoreline	+957	City of Hugo.
Unnamed Wetland (DNR ID No. 82022500).	Entire shoreline	+974	City of Hugo.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ^Elevation in meters (MSL) Modified	Communities affected
Unnamed Wetland (DNR ID No. 82022700).	Entire shoreline	+945	City of Hugo.
Unnamed Wetland (DNR ID No. 82022900).	Entire shoreline	+952	City of Hugo.
Unnamed Wetland (DNR ID No. 82031200).	Entire shoreline	+910	Unincorporated Areas of Washington County.
Unnamed Wetland (DNR ID No. 82035000).	Entire shoreline	+1005	City of Grant.
Unnamed Wetland North (DNR ID No. 82031100).	Entire shoreline	+916	Unincorporated Areas of Washington County.
Unnamed Wetland South (DNR ID No. 82031100).	Entire shoreline	+918	Unincorporated Areas of Washington County.
Valley Branch	Approximately 345 feet downstream of Putman Boulevard South.	+693	City of Afton.
	At West Metcalf Marsh Outfall	+813	
Valley Creek	At the confluence with Valley Branch	+714	City of Afton.
	Approximately 2,080 feet upstream of 22nd Street South (most upstream crossing).	+907	
Valley Creek Tributary	At the confluence with Valley Creek	+792	City of Afton.
	Approximately 3,265 feet upstream of the confluence with Valley Creek.	+812	
West Boot Lake	Entire shoreline	+920	Unincorporated Areas of Washington County.
West Metcalf Marsh	Entire shoreline	+813	City of Afton.
White Rock Lake	Entire shoreline	+966	City of Scandia.

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
^Elevation in meters (MSL).

ADDRESSES

City of Afton
Maps are available for inspection at 3033 St. Croix Trail South, Afton, MN 55001.

City of Bayport
Maps are available for inspection at 294 North 3rd Street, Bayport, MN 55003.

City of Cottage Grove
Maps are available for inspection at 7516 80th Street South, Cottage Grove, MN 55016.

City of Forest Lake
Maps are available for inspection at 220 North Lake Street, Forest Lake, MN 55025.

City of Grant
Maps are available for inspection at 111 Wildwood Road, Willernie, MN 55090.

City of Hastings
Maps are available for inspection at 101 4th Street East, Hastings, MN 55033.

City of Hugo
Maps are available for inspection at 14669 Fitzgerald Avenue North, Hugo, MN 55038.

City of Lake Elmo
Maps are available for inspection at 3800 Laverne Avenue, Lake Elmo, MN 55042.

City of Lake St. Croix Beach
Maps are available for inspection at 1919 Quebec Avenue South, Lake St. Croix Beach, MN 55043.

City of Lakeland
Maps are available for inspection at 690 Quinnell Avenue North, Lakeland, MN 55043.

City of Lakeland Shores
Maps are available for inspection at 1858 Ramada Avenue South, Lakeland Shores, MN 55043.

City of Marine on St. Croix
Maps are available for inspection at 121 Judd Street, Marine on St. Croix, MN 55047.

City of Newport
Maps are available for inspection at 596 7th Avenue, Newport, MN 55055.

City of Oak Park Heights
Maps are available for inspection at 14168 Oak Park Boulevard North, Oak Park Heights, MN 55082.

City of Oakdale
Maps are available for inspection at 1584 Hadley Avenue North, Oakdale, MN 55128.

City of Scandia
Maps are available for inspection at 13809 Scandia Trail, Scandia, MN 55073.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified	Communities affected

City of St. Mary's Point
Maps are available for inspection at 16491 St. Mary's Drive South, St. Mary's Point, MN 55043.

City of St. Paul Park
Maps are available for inspection at 600 Portland Avenue, St. Paul Park, MN 55071.

City of Stillwater
Maps are available for inspection at 106 South Main Street, Stillwater, MN 55082.

Unincorporated Areas of Washington County
Maps are available for inspection at 14949 62nd Street North, Stillwater, MN 55082.

Lauderdale County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1018

McLemore Branch	Approximately 2,427 feet upstream of the confluence with Newell Branch.	+357	Unincorporated Areas of Lauderdale County, City of Meridian..
	Approximately 3,375 feet upstream of Windmill Drive	+403	
Sowashee Creek Tributary 10	Approximately 700 feet downstream of Dale Drive	+360	Unincorporated Areas of Lauderdale County, Town of Marion.
	Approximately 710 feet upstream of Cotton Gin Road	+399	
Sowashee Creek Tributary 8	Approximately 990 feet upstream of the confluence of Sowashee Creek Tributary 10.	+388	Unincorporated Areas of Lauderdale County, Town of Marion.
	Approximately 2,475 feet upstream of State Highway 39	+464	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

City of Meridian
Maps are available for inspection at City Hall, 601 24th Avenue, Meridian, MS 39302.

Town of Marion
Maps are available for inspection at the Town Hall, 6021 Dale Drive, Marion, MS 39342.

Unincorporated Areas of Lauderdale County
Maps are available for inspection at the Tax Assessor's Office, 500 Constitution Avenue, Meridian, MS 39301.

Lee County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–7773

Campbelltown Creek	Approximately 375 feet upstream of State Highway 145	+340	Unincorporated Areas of Lee County, City of Baldwyn.
	Approximately 4,802 feet upstream of County Road 2790	+359	
Chiwapa Creek	Approximately 3,480 feet upstream of the confluence with Chiwapa Creek Tributary 15.	+269	Unincorporated Areas of Lee County.
	Approximately 3,180 feet upstream of the confluence with Chiwapa Creek Tributary 16.	+274	
Coonewah Creek	At Interstate 45	+242	Unincorporated Areas of Lee County, Town of Shannon.
	Approximately 6,220 feet upstream of State Highway 145	+252	
Coonewah Creek Tributary 3	Approximately 1,210 feet downstream of County Road 484.	+254	Unincorporated Areas of Lee County.
	Approximately 620 feet upstream of County Road 520	+266	
Euclatubba Creek	At the confluence with Mud Creek	+280	Unincorporated Areas of Lee County, Town of Saltillo.
	Approximately 1,990 feet upstream of State Highway 145	+302	
Mud Creek	Approximately 4,465 feet downstream of Interstate 78	+266	Unincorporated Areas of Lee County, City of Tupelo, Town of Saltillo.
	Approximately 80 feet upstream of County Road 681	+289	
Reeds Branch	Approximately 2,410 feet downstream of the confluence with Reeds Branch Tributary 1.	+269	Unincorporated Areas of Lee County.
	Approximately 1,565 feet upstream of County Road 900	+302	
Sand Creek	At the confluence with Mud Creek	+280	Unincorporated Areas of Lee County, Town of Saltillo.
	At State Highway 363	+307	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified	Communities affected
Sand Creek Tributary 1	At the confluence with Sand Creek	+299	Unincorporated Areas of Lee County, Town of Saltillo.
	Approximately 2,190 feet upstream of Fellowship Road	+326	
Sand Creek Tributary 2	At the confluence with Sand Creek	+304	Town of Saltillo.
	Approximately 6,890 feet upstream of the confluence with Sand Creek.	+343	
Town Creek	Approximately 1,575 feet downstream of the confluence with Kings Creek.	+257	Unincorporated Areas of Lee County, City of Tupelo.
	Approximately 2,500 feet upstream of Mount Vernon Road.	+279	
	Approximately 1,070 feet downstream of the confluence with Town Creek Tributary 9.	+291	
	At the Lee/Pontotoc county boundary	+328	
Town Creek Tributary 1	Approximately 1,900 feet downstream of railroad	+226	Unincorporated Areas of Lee County, Town of Nettleton.
	Approximately 1,080 feet upstream of railroad	+238	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

City of Baldwyn
Maps are available for inspection at City Hall, 202 South 2nd Street, Baldwyn, MS 38824.

City of Tupelo
Maps are available for inspection at the Planning Department, City Hall, 117 North Broadway, 2nd Floor, Tupelo, MS 38802.

Town of Nettleton
Maps are available for inspection at the Town Hall, 124 Short Street, Nettleton, MS 38858.

Town of Saltillo
Maps are available for inspection at 205 South 2nd Street, Saltillo, MS 38866.

Town of Shannon
Maps are available for inspection at the Town Hall, 1426 North Street, Shannon, MS 38868.

Unincorporated Areas of Lee County
Maps are available for inspection at the County Courthouse, 201 West Jefferson, Suite A, Tupelo, MS 38801.

Lake County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–7735

Heisley Creek	On the upstream side of CSX Railroad	+640	Unincorporated Areas of Lake County, City of Mentor, City of Painesville.
	Approximately 800 feet upstream of Jackson Street	+663	
Wasson Ditch	On the upstream side of CSX Railroad	+641	City of Mentor, City of Painesville.
	Approximately 200 feet upstream of CSX Railroad	+641	
Lake Erie	Entire coastline from the western boundary with Cuyahoga County to the eastern boundary with Ashtabula County.	+576	City of Eastlake, City of Mentor, City of Mentor-on-the-Lake, City of Willoughby, City of Willowick, Village of Fairport Harbor, Village of Lakeline, Village of North Perry, Village of Timberlake.
Grand River/Lake Erie Backwater.	Village of Grand River northeastern corporate limit	+576	Village of Grand River.
	220 feet upstream of Fairport, Painesville, and Eastern Railway.	+576	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified	Communities affected

ADDRESSES

City of Eastlake
Maps available for inspection at 35150 Lakeshore Boulevard, Eastlake, OH 44095.

City of Mentor
Maps available for inspection at the Office of the City Engineer, 8500 Civic Center Boulevard, Mentor, OH 44060.

City of Mentor-on-the-Lake
Maps available for inspection at 5860 Andrews Road, Mentor-on-the-Lake, OH 44060.

City of Painesville
Maps available for inspection at 7 Richmond Street, Painesville, OH 44077.

City of Willoughby
Maps available for inspection at 1 Public Square, Willoughby, OH 44094.

City of Willowick
Maps available for inspection at 31230 Vine Street, Willowick, OH 44095.

Unincorporated Areas of Lake County
Maps available for inspection at the County Engineer's Office, 550 Blackbrook Road, Painesville, OH 44077.

Village of Fairport Harbor
Maps available for inspection at 220 3rd Street, Fairport Harbor, OH 44077.

Village of Grand River
Maps available for inspection at 205 Singer Avenue, Grand River, OH 44045.

Village of Lakeline
Maps available for inspection at the Village Hall, 33801 Lake Shore Boulevard, Lakeline, OH 44095.

Village of North Perry
Maps available for inspection at 4449 Lockwood Road, North Perry, OH 44081.

Village of Timberlake
Maps available for inspection at 11 East Shore Boulevard, Timberlake, OH 44095.

Monroe County, Tennessee, and Incorporated Areas
Docket No.: FEMA–B–1024

Sweetwater Creek	1,430 feet downstream of North Main Street	+888	City of Sweetwater, Unincorporated Areas of Monroe County.
	1,655 feet upstream of State Highway 68	+920	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

City of Sweetwater
Maps are available for inspection at 203 Monroe Street, Sweetwater, TN 37874.

Unincorporated Areas of Monroe County
Maps are available for inspection at 310 Tellico Street, Suite 2, Madisonville, TN 37354.

Anderson County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1017

Bassett Creek	Approximately 2,828 feet downstream from the intersection of Bassett Road and Bassett Creek.	+322	Unincorporated Areas of Anderson County.
	Approximately 1,619 feet downstream from the intersection of Bassett Road and Bassett Creek.	+326	
Wells Creek	Approximately 1,829 feet downstream from the confluence of Wells Creek, Wells Creek Northwest, and Wells Creek Tributary South.	+374	Unincorporated Areas of Anderson County.
	Approximately 373 feet downstream from North Loop 256	+374	
	Approximately 1,020 feet downstream from Moody Street	+381	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

Unincorporated Areas of Anderson County
Maps are available for inspection at the County Courthouse, 500 North Church Street, Palestine, TX 75801.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified	Communities affected
Green Lake County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–7755			
Silver Creek	At County Highway A	+802	Unincorporated Areas of Green Lake County.
	Approximately 2.1 miles upstream of Spaulding Hill Road at the county boundary.	+804	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

Unincorporated Areas of Green Lake County

Maps are available for inspection at the Zoning Department, 492 Hill Street, Green Lake, WI 54941.

Rusk County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–7778			
Chippewa River	At county boundary with Chippewa County	+1046	Unincorporated Areas of Rusk County.
	Approximately 7.5 miles upstream of County Highway E	+1065	
Flambeau River	At the confluence with the Chippewa River	+1054	Unincorporated Areas of Rusk County, City of Ladysmith.
	Approximately 1.5 mile upstream of U.S. Highway 8	+1120	
Flambeau River	At Dairyland Reservoir	+1184	Unincorporated Areas of Rusk County.
	At Big Falls Dam	+1190	

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Elevation in meters (MSL).

ADDRESSES

City of Ladysmith

Maps are available for inspection at City Hall, 120 Miner Avenue West, Ladysmith, WI 54848.

Unincorporated Areas of Rusk County

Maps are available for inspection at the County Courthouse, 311 East Miner Avenue, Ladysmith, WI 54848.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Sandra K. Knight,

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

[FR Doc. 2010–907 Filed 1–19–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 237 and 252

[DFARS Case 2006–D051]

RIN 0750–AF80

Defense Federal Acquisition Regulation Supplement; Lead System Integrators

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2008. Section 802 places limitations on the award of new contracts for lead system integrator functions in the acquisition of major DoD systems.

DATES: *Effective Date:* January 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–1302; facsimile 703–602–0350, Please cite DFARS Case 2006–D051.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 73 FR 1823 on January 10, 2008, to implement Section 807 of the National

Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) with regard to limitations on the performance of lead system integrator functions by DoD contractors. On January 28, 2008, Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) placed additional limitations on DoD's use of lead system integrators. A second interim rule was published on July 15, 2009, amending the first interim rule. One comment was received after the comment period closed. The comment concerned the definitions of lead system integrator with system responsibility and lead system integrator without system responsibility. The comment was addressed in the interim rule published on July 15, 2009.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because application of the rule is limited to contractors performing lead system integrator functions for major DoD systems.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 237 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 209, 237, and 252, which was published at 74 FR 34268 on July 15, 2009, is adopted as a final rule without change.

[FR Doc. 2010–888 Filed 1–19–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AG31

Defense Federal Acquisition Regulation Supplement; Trade Agreements—Costa Rica and Peru (DFARS Case 2008–D046)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is converting the interim rule issued on July 29, 2009 (74 FR 37650) to a final rule without change. The interim rule amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to Costa Rica, and the United States-Peru Trade Promotion Agreement. The trade agreements waive the applicability of the Buy American Act for some foreign supplies and construction materials and specify procurement procedures designed to ensure fairness.

DATES: *Effective date:* January 20, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0305. Please cite DFARS Case 2008–D046.

SUPPLEMENTARY INFORMATION:

A. Background

This finalizes, without change, the interim rule that implemented the Dominican Republic—Central America—United States Free Trade Agreement with respect to Costa Rica and the United States-Peru Trade Promotion Agreement. The trade agreements waive the applicability of the Buy American Act for DoD acquisition of some foreign supplies and construction materials from Costa Rica and Peru and specify procurement procedures designed to ensure fairness.

In addition, the interim rule amended DFARS 225.003 to exclude Oman from the definition of "Free Trade Agreement country" for purposes of DoD acquisitions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up DoD acquisition to the products of Costa Rica and Peru, DoD does not estimate a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt from application of the trade agreements. No public comments were received relating to the burden on small businesses.

C. Paperwork Reduction Act

The interim rule affected the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, was negligible.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

PARTS 225 AND 252—[AMENDED]

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 74 FR 37650 on July 29, 2009, is adopted as a final rule without change.

[FR Doc. 2010–934 Filed 1–19–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.070817467–8554–02]

RIN 0648–XT87

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Limited Access General Category Scallop Fishery to Individual Fishing Quota Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the Limited Access General Category (LAGC) Scallop Fishery is closed to individual fishing quota (IFQ) scallop vessels as of 0001 hr local time, January 18, 2010. This fishery will re-open on March 1, 2010. This action is based on the determination that the annual scallop total allowable catch (TAC) for LAGC IFQ scallop vessels (including vessels issued an IFQ letter of authorization (LOA) to fish under appeal) is projected to be landed. This action is being taken to prevent IFQ scallop vessels from exceeding the 2009 fishing year annual TAC, in accordance with the regulations implementing Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP), enacted by Framework 19 to the FMP, and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the LAGC fishery to all IFQ scallop vessels is effective 0001 hr local time, January 18, 2010, through February 28, 2010.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the LAGC fishery authorize vessels issued a valid IFQ scallop permit to fish in the LAGC fishery under specific conditions, including a TAC (see §§ 648.59, 648.60, and 648.53(a)(8)(iii)). The TACs were established by the final rule that implemented Framework 19 to the FMP (73 FR 30790, May 29, 2008) and included an annual TAC of 4,590,024 lb (2,082,000 kg) that may be landed by IFQ vessels during the 2009 fishing year, approximately 459,002 lb (208,199 kg) of which was remaining for harvest at the beginning of the fourth quarter. The regulations at § 648.53(a)(8)(iii) require the LAGC fishery to be closed to IFQ vessels once the Northeast Regional Administrator has determined that the TAC is projected to be landed.

Based on dealer reporting and vessel pre-landing reports through Vessel Monitoring Systems (VMS), it is projected that, given current fishing activity levels of IFQ scallop vessels in the area, 4,590,024 lb (2,082,000 kg) will have been landed by January 18, 2010. Therefore, in accordance with the regulations at § 648.53(a)(8)(iii), the LAGC scallop fishery is closed to all general IFQ vessels as of 0001 hr local time January 18, 2010. Accordingly, this closure is in effect for the remainder of the fourth quarter of the 2009 scallop fishing year. IFQ scallop vessels are not allowed to fish for, possess, or retain scallops, or declare, or initiate, a scallop trip following this closure for the remainder of the 2009 fourth quarter, ending on February 28, 2010. The LAGC scallop fishery is scheduled to re-open to IFQ scallop vessels on March 1, 2010.

Classification

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

This action closes the LAGC scallop fishery to all IFQ scallop vessels until March 1, 2010. The regulations at § 648.53(a)(8)(iii) require such action to ensure that IFQ scallop vessels do not exceed the 2009 fishing year annual TAC. The LAGC scallop fishery opened for the fourth quarter of the 2009 fishing year at 0001 hours on December 1, 2009. Data indicating the IFQ scallop fleet has landed all of the 2009 fourth quarter TAC have only recently become available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. If implementation of this closure is delayed to solicit prior public comment, the quota for this quarter will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: January 14, 2010

Emily H. Menashes,

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

[FR Doc. 2010–945 Filed 1–14–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XT86

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

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

ACTION: Notification of fishery assignments.

SUMMARY: NMFS is notifying the owners and operators of registered vessels of their assignments for the 2010 A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the 2010 A season HLA limits established for area 542 and area 543 pursuant to the final 2009 and 2010 harvest specifications for groundfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 19, 2010, until 1200 hrs, A.l.t., April 15, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

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.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Eight vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment in accordance with § 679.20(a)(8)(iii).

For the Amendment 80 cooperative, the vessels authorized to participate in the first HLA directed fishery in area 542 and the second HLA directed fishery in area 543 are as follows: Federal Fishery Permit number (FFP) 2134 Ocean Peace and FFP 3835 Seafisher.

For the Amendment 80 cooperative, the vessel authorized to participate in the first HLA directed fishery in area 543 and the second HLA directed fishery in area 542 is as follows: FFP 2733 Seafreeze Alaska.

For the Amendment 80 limited access sector, vessels authorized to participate in the first HLA directed fishery in area 542 and in the second HLA directed fishery in area 543 are as follows: FFP 3423 Alaska Warrior and FFP 4093 Alaska Victory.

For the Amendment 80 limited access sector, the vessels authorized to participate in the first HLA directed fishery in area 543 and the second HLA directed fishery in area 542 are as follows: FFP 2443 Alaska Juris and FFP 3819 Alaska Spirit.

For the BSAI trawl limited access sector, the vessel authorized to participate in the first HLA directed fishery in area 542 is as follows: FFP 11770 Alaska Knight.

Classification

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 requirement is unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the A season HLA fisheries in area 542 and area 543.

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.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 14, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–966 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 12
Wednesday, January 20, 2010

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 JUSTICE

Bureau of Prisons

28 CFR Part 522

[BOP–1110–P]

RIN 1120–AB47

Intake Screening

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to streamline intake screening regulations by removing internal agency management procedures that need not be stated in regulation.

DATES: Comments are due by March 22, 2010.

ADDRESSES: Submit comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov.* You may also comment via the Internet to the Bureau at *boprules@bop.gov* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

• Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, *etc.*) voluntarily submitted by the commenter.

• If you want to submit personal identifying information (such as your name, address, *etc.*) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

• If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

• Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the "For Additional Information" paragraph.

In this document, the Bureau of Prisons (Bureau) proposes to streamline intake screening regulations in 28 CFR part 522, subpart C, by removing internal agency management procedures that need not be stated in regulation. Although we are removing these provisions from the CFR, they will remain in Bureau policy statements on intake screening. Bureau policy is a more appropriate vehicle through which to provide instruction and guidance to staff.

The two regulations in 28 CFR subpart C, §§ 522.20 and 522.21, describe the Bureau's intake screening procedures. Section 522.20 is a statement of purpose which we have not substantively altered.

Section 522.21 explains that a newly arrived inmate will be cleared by the Medical Department and interviewed by staff before assignment to the general population. This section has not substantively changed, but is simply reworded. The current regulation states that, except for such camps and other satellite facilities where segregating a newly arrived inmate in detention is not feasible, the Warden will ensure that a newly arrived inmate is cleared by the Medical Department and provided a social interview by staff before assignment to the general population.

The introductory paragraph in § 522.21 states that intake screening interviews need not be done at "camps and other satellite facilities where segregating a newly arrived inmate in detention is not feasible * * *" This language is deleted from the proposed regulation because intake interviews are necessary at all facilities, including camps and satellite facilities. If an issue arises during intake screening of an inmate at a facility without the means to appropriately segregate an inmate, that inmate will be moved to a more appropriate facility. The regulation is therefore being revised to indicate that all inmates must be screened, without differentiation between those arriving at camps, satellite facilities, or other types of facilities.

Other provisions in § 522.21 are being deleted because they are purely staff guidance. The deleted provisions are (1) an instruction to staff to evaluate both the general physical appearance and emotional condition of the inmate during a social interview; and (2) an instruction to staff to place recorded results of the intake medical screening and the social interview in the inmate's central file. Both of these concepts will be retained in the relevant policy document, which is the Director's mandatory instruction to staff. The deleted provisions relate solely to internal agency management and practice, and do not impose obligations or confer any benefits upon our regulated entities (the inmates) or the public.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on

distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 522

Prisoners.

Dated: January 8, 2010.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 522 as follows.

Subchapter B—Inmate Admission, Classification, and Transfer

PART 522—ADMISSION TO INSTITUTION

1. The authority citation for 28 CFR part 522 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise Subpart C to read as follows:

Subpart C—Intake Screening

Sec.
522.20 Purpose and scope.
522.21 Procedures.

§ 522.20 Purpose and scope.

The purpose of this subpart is to explain that Bureau of Prisons staff screen newly arrived inmates to ensure that Bureau health, safety, and security standards are met.

§ 522.21 Procedures.

(a) Upon an inmate's arrival, the inmate will be interviewed to determine if there are non-medical reasons for housing the inmate away from the general population.

(b) Within 24 hours after an inmate's arrival, the inmate will be medically screened to determine if there are medical reasons, including mental health reasons, for housing the inmate away from the general population or for restricting temporary work assignments.

[FR Doc. 2010–878 Filed 1–19–10; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–1186; FRL–9104–6]

Approval and Promulgation of Air Quality Implementation Plan: Kentucky; Approval Section 110(a)(1) Maintenance Plan for the 1997 8-Hour Ozone Standard for the Owensboro Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Kentucky State Implementation Plan (SIP) concerning the maintenance plan addressing the 1997 8-hour ozone standard for the Owensboro 8-hour ozone attainment area, which comprises Daviess County and a portion of Hancock County (hereafter referred to as the "Owensboro Area"). This maintenance plan was submitted to EPA on May 27, 2008, by the Commonwealth of Kentucky, and ensures the continued attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) through the year 2020. On July 15, 2009, the Commonwealth of Kentucky submitted supplemental information with updated emissions tables to reflect actual emissions for this Area. EPA proposes to find that this plan meets the statutory and regulatory requirements, and is consistent with EPA's guidance. EPA is proposing to approve the revisions to the Kentucky SIP, pursuant to Section 110 of the Clean Air Act (CAA). On March 12, 2008, EPA issued a revised ozone standard. The current action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the Owensboro Area under the 2008 standard will be addressed in the future.

DATES: Comments must be received on or before February 19, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–1186, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2007–1186, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2007–1186. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9152. Mr. Farngalo can also be reached via electronic mail at *farngalo.zuri@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Analysis of the Commonwealth's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

In accordance with the CAA, the Owensboro Area, consisting of Daviess County and a portion of Hancock County in Kentucky, was designated as marginal nonattainment for the 1-hour ozone NAAQS effective November 6, 1991 (56 FR 56694) because the Area did not meet the 1-hour ozone NAAQS. On November 13, 1992, the Commonwealth of Kentucky submitted a request to redesignate the Owensboro Area to attainment for the 1-hour ozone standard. At the same time as the redesignation request, Kentucky submitted the required ozone monitoring data and maintenance plan to ensure that the Owensboro Area would remain in attainment for the 1-hour ozone standard for a period of 10 years, consistent with the CAA section 175A. The maintenance plan submitted by Kentucky followed EPA guidance for limited maintenance areas, which applied to 1-hour ozone standard areas with design values lower than 85 percent of the applicable standard (0.12 parts per million (ppm)). On February 7, 1995, EPA approved Kentucky's request to redesignate the Owensboro Area (60 FR 7124) to attainment for the 1-hour ozone standard.

On April 30, 2004, EPA designated areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase I Implementation Rule for the 1997 8-hour ozone NAAQS (69 FR 23951) (Phase I Rule). Daviess County and a portion of Hancock County (i.e., which make up the Owensboro Area) were designated as attainment for the 1997 8-hour ozone standard, effective June 15, 2004. The Owensboro attainment area consequently was required to submit a 10-year maintenance plan under section 110(a)(1) of the CAA and the Phase I Rule, 40 CFR 51.905(a)(3) and (4). On May 20, 2005, EPA issued guidance providing information on how a state might fulfill the maintenance plan obligation established by the CAA and the Phase I Rule (Memorandum from Lydia N. Wegman to Air Division Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,* May 20, 2005—hereafter referred to as "Wegman Memorandum"). On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated portions of EPA's Phase I Implementation Rule for the 1997 8-hour ozone standard. *See South Coast Air Quality Management District.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). The Court vacated those portions of the Rule that provided for regulation of the 1997 8-hour ozone nonattainment areas designated under Subpart 1 in lieu of Subpart 2 (of part D of the CAA), among other portions. The Court's decision did not alter any requirements under the Phase I Rule for section 110(a)(1) maintenance plans. EPA is proposing to find that Kentucky's May 27, 2008, proposed SIP revision satisfies the section 110(a)(1) CAA requirements for a plan that provides for implementation, maintenance, and enforcement of the 1997 8-hour ozone NAAQS in the Owensboro Area. On March 12, 2008, EPA issued a revised ozone standard. The current action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the Owensboro Area under the 2008 standard will be addressed in the future.

II. Analysis of the Commonwealth's Submittal

On May 27, 2008, the Commonwealth of Kentucky submitted a SIP revision containing a 1997 8-hour ozone maintenance plan for the Owensboro Area as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase I Rule (*see* 40 CFR 51.905(a)(4)). The purpose of this maintenance plan is to ensure continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the Owensboro Area until 2020.

As required, this plan provides for continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the Owensboro Area for 10 years from the effective date of the Area's designation as attainment for the 1997 8-hour ozone NAAQS, and includes contingency measures. A July 15, 2009, submittal from Kentucky updated the emissions projections for point sources for 2005 and 2008 with actual data, and revised the point source projections for 2011, 2014, 2017 and 2020 based on more recent data. Each of the section 110(a)(1) plan components for the Owensboro Area is discussed below.

(a) *Attainment Inventory.* In order to demonstrate maintenance in the Owensboro Area, Kentucky developed comprehensive inventories of volatile

organic compounds (VOC) and nitrogen oxide (NO_X) emissions from area, stationary, and mobile sources using 2002 as the base year. The year 2002 is an appropriate year for Kentucky to base attainment level emissions, because states may select any one of the three years on which the 1997 8-hour attainment designation was based (2001, 2002, and 2003). The Commonwealth's submittal contains the detailed inventory data and summaries by source category. Using the 2002 inventory (as a base year) reflects one of the years used for calculating the air quality design value on which the 1997 8-hour ozone designation for the Area was based.

A further practical reason for selecting 2002 as the base year emission inventory is that section 110(a)(2)(B) of the CAA and the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) require states to submit emissions inventories for all criteria pollutants and their precursors every three years, on a schedule that includes the emissions year 2002. The due date for the 2002 emissions inventory is established in the Rule as June 2004. In accordance with these requirements, Kentucky compiles a statewide emissions inventory for point sources on an annual basis. On-road mobile emissions of VOC and NO_X were estimated using MOBILE6.2 motor vehicle emissions factor computer model. Non-road mobile emissions data were derived using the U.S. EPA's Non-Road Model.

In projecting data for the attainment year 2020 inventory, Kentucky used several methods to project data from the base year 2002 to the years 2005, 2008, 2011, 2014, 2017 and 2020. These actual and projected inventories were developed using EPA-approved technologies and methodologies. Point source and non-point source projections were derived from the Emissions Growth Analysis System version 4.0 (EGAS 4.0). Non-road mobile projections were derived from EGAS 4.0, as well as from the National Mobile Inventory Model.

The following tables provide VOC and NO_X emissions data for the 2002 base attainment year inventory; as well as actual VOC and NO_X emission inventory data for 2005 and 2008, and projected VOC and NO_X emission inventory data for 2011, 2014, 2017 and 2020.

TABLE 1. OWENSBORO AREA[1]—VOC AND NO_X EMISSIONS INVENTORY

Emissions	2002	2005	2008	2011	2014	2017	2020
Total VOC (tons per day)	18.97	14.54	14.42	14.09	13.85	13.79	13.81
Total NO_X (tons per day)	44.87	36.78	31.07	30.63	30.28	30.27	30.58

As shown in Table 1 above, the Owensboro Area total VOC and NO_X emissions are projected to decrease from the base year of 2002 to the maintenance year of 2020, thus demonstrating continued attainment/maintenance of the 1997 8-hour ozone standard. Total VOC emissions are projected to steadily decrease from the base year of 2002 through 2017, but are then projected to slightly increase by 0.02 tons per day (tpd) between the years 2017 and 2020. Additionally, total NO_X emissions steadily decreased from the base year of 2002 to 2017, but are then projected to slightly increase by 0.31 tpd. However, year 2020 emissions projected for both VOC and NO_X are well under the 2002 baseline year emission levels. Thus EPA proposes to find that Kentucky demonstrated that the 1997 8-hour ozone standard will continue to be maintained.

As shown in the table above, Kentucky has demonstrated that the future year emissions will be less than the 2002 base attainment year's emissions for the 1997 8-hour ozone NAAQS. The attainment inventory submitted by Kentucky for this Area is consistent with the criteria discussed in the Wegman Memorandum. EPA finds that the actual emissions levels in 2005, and 2008, along with the future emissions for 2011, 2014, 2017, and 2020 are expected to be less than the emissions levels in 2002. See Table 2 for design value trends for this Area.

In the event that a future 8-hour ozone monitoring reading in this Area is found to violate the 1997 8-hour ozone standard, the contingency plan section of the maintenance plan includes measures that at least one of which will be promptly implemented to ensure that this Area returns the maintenance of the 1997 8-hour ozone standard. Please see section (d) Contingency Plan, below, for additional information related to the contingency measures.

(b) *Maintenance Demonstration.* The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in compliance with the 1997 8-hour ozone standard for the 10 year period following the effective date of designation as unclassifiable/attainment. The end projection year for the maintenance plan for Owensboro Area was 2020. As discussed in section (a) Attainment Inventory above, Kentucky identified the level of ozone-forming emissions that were consistent with attainment of the NAAQS for ozone in 2002. For the original submittal, Kentucky projected VOC and NO_X emissions for the years 2005, 2008, 2011, 2014, 2017 and 2020 in the Owensboro Area. Subsequently, Kentucky provided updated projections for all the years. *See* Table 1. EPA proposes to find that the future emissions levels in those years are expected to be below the emissions levels in 2002.

Kentucky's SIP revision also relies on a combination of several air quality measures that will provide for additional 8-hour ozone emissions reductions in the Owensboro Area. These measures include the potential implementation of the following, among others: (1) Federal motor vehicle control program; (2) fleet turnover of automobiles; (3) low reid vapor pressure of gasoline; (4) tier 2 motor vehicle emissions and fuel standards; (5) heavy-duty gasoline and diesel highway vehicles standard; (6) large nonroad diesel engines rule; (7) nonroad spark ignition engines and recreational engines standard; (8) point source emission reductions; (9) Air Products and Chemicals –21–157–00009, (10) reasonably available control measures, (11) maximum available control technology; (12) NO_X SIP Call; (13) Clean Air Interstate Rule (CAIR)[2]; (14) several control programs to reduce area source emissions from aerosol coatings, architectural and industrial maintenance coatings, and commercial/consumer products; (15) non–highway mobile source reductions; and (16) emissions standards for small and large spark-ignition engines, locomotives and land based diesel engines.

[1] These emissions estimates in this table were provided by Kentucky on July 15, 2009, through John Lyons, Director, Division of Air Quality, as an update to emissions estimates provided in the May 25, 2007 submittal.

[2] Despite the legal status of CAIR as remanded, many facilities have already or are continuing with plans to install emission controls that may benefit Kentucky areas.

There are no sources subject to CAIR or the NO_X SIP Call in the Owensboro Area. Hence the recent remand of CAIR does not impact the maintenance inventories or maintenance demonstration in any way. Further, the Owensboro Area was in attainment prior to implementation of these rules. Hence any contribution to the reduction in the background ozone levels from these rules will be in addition to the projected decreases within the maintenance planning area. These rules are included in the discussion of the maintenance plan because, even though the submittal takes no credit for them, they are expected to reduce transported NO_X and ozone from outside the nonattainment area, providing a further, unquantified improvement in the Area's air quality.

(c) *Ambient Air Quality Monitoring.* The table below shows monitoring and design values [3] for the Owensboro Area. The ambient ozone monitoring data was collected at sites that were selected with assistance from EPA and are considered to be representative of the area of highest concentration.

There is a monitor in Hancock and Daviess Counties in the Owensboro Area. There was no design value exceeding the 1997 0.08 ppm standard and it is anticipated that the monitors will remain at current locations, unless otherwise allowed to be removed in consultation with EPA and in accordance with the 40 CFR part 58. *See,* Wegman Memorandum, pages 4 and 5.

TABLE 2—MONITORING AND DESIGN VALUES FOR 8–HOUR OZONE

[ppm]

Year	Owensboro area monitoring values		
	Daviess County	Hancock County	Area design value
2000–2002	0.077	0.083	0.083
2001–2003	0.076	0.082	0.082
2002–2004	0.073	0.080	0.080
2003–2005	0.072	0.073	0.073
2004–2006	0.074	0.073	0.074
2005–2007	0.081	0.076	0.081
2006–2008	0.077	0.076	0.077

Based on the Table above, each of the three-year average available design values demonstrates attainment of the 1997 ozone NAAQS. The design value for the area is the higher of the design values at either of the monitors. Further, these design vales indicate that the Owensboro Area is expected to continue attainment of the 1997 ozone NAAQS. The attainment level for the 1997 8-hour ozone standard is 0.08 ppm, effectively 0.084 ppm with the rounding convention. However, in the event that a design value at one of Owensboro Area monitoring sites exceeds the 1997 8-hour ozone standard, the contingency plan included in the Kentucky's maintenance plan submittal includes contingency measures which will be promptly implemented in accordance with section (d) Contingency Plan, below.

(d) *Contingency Plan.* In accordance with 40 CFR 51.905(a)(4)(ii) and the Wegman Memorandum, the section 110(a)(1) maintenance plan includes contingency provisions to promptly correct any violation of the 1997 8-hour ozone NAAQS that occurs. In this maintenance plan, if contingency measures are triggered by a violation of the 8-hour ozone NAAQS, Kentucky is committing to adopt one or more of the contingency measures listed below, within nine months following the trigger, and implement the measures within eighteen months following the trigger. The contingency measures include: (1) Implementation of a program to require additional emissions reductions on stationary sources; (2) requirement for Stage I Vapor Recovery; (3) requirement of Stage II Vapor Recovery; (4) open burning during summer ozone season; (5) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles; (6) trip-reduction ordinances; (7) employer-based transportation management plans, including incentives; (8) programs to limit or restrict vehicle use in downtown areas, or other areas of emissions concentration, particularly during periods of peak use; and (9) programs for new construction and major reconstructions of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

The maintenance plan also includes two additional triggers (which would occur prior to a violation of the 1997 8-hour ozone NAAQS) for an evaluation of existing control measures to see if any further emission reduction measures should be implemented at that time. These triggers are an exceedance of the NAAQS in any portion of the maintenance area or a ten percent or greater increase in emissions of either VOC or NO_X, based on the 2002 emissions inventory and periodic emission inventory updates. If either of these triggers occurs, Kentucky commits to evaluating existing control measures to see if any further emission reduction measures should be implemented.

EPA proposes to find that these contingency measures and schedules for implementation satisfy EPA's guidance on the requirements of section 110(a)(1) of continued attainment. Continued attainment of the 1997 8-hour ozone NAAQS in the Owensboro Area will depend, in part, on the air quality measures discussed previously (see section II). In addition, Kentucky commits to verifying the 1997 8-hour ozone status in each maintenance plan through annual and periodic evaluations of the emissions inventories. In the annual evaluations, Kentucky will review VOC and NO_X emission data from stationary point sources. During the periodic evaluations (every three years), Kentucky will update the emissions inventory for all

[3] The air quality design value at a monitoring site is defined as that concentration that when reduced to the level of the standard ensures that the site meets the standard. For a concentration-based standard, the air quality design value is simply the standard-related test statistic. Thus, for the primary and secondary ozone standards, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration is also the air quality design value for the site. 40 CFR Part 50, Appendix I, Section 3.

emissions source categories, and compare the updated emissions inventory data with actual 2005 and 2008, and projected 2011, 2014, 2017 and 2020 attainment emissions inventories to verify continued attainment of the 1997 8-hour ozone standard.

III. Proposed Action

Pursuant to section 110(a)(1) of the CAA, EPA is proposing to approve the maintenance plan addressing the 1997 8-hour ozone standard for the Owensboro Area, which was submitted by Kentucky on May 27, 2008, as updated in a July 15, 2009, submission, and which ensures continued attainment of the 1997 8-hour ozone NAAQS through the year 2020. EPA has evaluated the Commonwealth's submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations, and is consistent with EPA policy.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 4, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–971 Filed 1–19–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 205, 207, 208, 209, 211, 215, 216, 217, 219, 225, 228, 232, 237, 246, 250, 252

Defense Federal Acquisition Regulation Supplement: Inflation Adjustment of Acquisition-Related Thresholds (DFARS Case 2009–D003)

AGENCY: Defense Acquisition Regulations System. Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 807 provides for adjustment every 5 years of statutory acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This case also reviews nonstatutory acquisition-related thresholds for adjustment in 2010.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 22, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D003, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2009–D003 in the subject line of the message.

Fax: 703–602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend multiple DFARS parts to implement Section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 807 provides for adjustment every 5 years (in years evenly divisible by 5) of statutory acquisition-related thresholds, except for Davis-Bacon Act, Service Contract Act, and trade agreements thresholds. This case also reviews nonstatutory DFARS acquisition-related thresholds for adjustment in 2010. FAR case 2008–024 proposes comparable changes to acquisition-related thresholds in the FAR.

This is the second review of DFARS acquisition-related thresholds. The last review was conducted under DFARS case 2004–D022. The final rule was published in the **Federal Register** on December 19, 2006 (71 FR 75891).

B. Analysis

1. What is an acquisition-related threshold?

This case builds on the review of DFARS thresholds in 2005 and uses the same interpretation of the statutory definition of acquisition-related threshold. The statute defines an

acquisition-related dollar threshold as a dollar threshold that is specified *in law* as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided *in that law* to the procurement of property or services by an Executive agency, as determined by the FAR Council.

There are other thresholds in the DFARS that, while not meeting this statutory definition of "acquisition-related," nevertheless meet all the other criteria. These thresholds may have their origin in Executive order or regulation.

Therefore, as used in this case, an acquisition-related threshold is a threshold that is specified in law, Executive order, or regulation as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law, Executive order, or regulation to the procurement of property or services by an Executive agency, as determined by the FAR Council. Acquisition-related thresholds are generally tied to the value of a contract, subcontract, or modification.

Examples of thresholds that are not viewed as "acquisition-related" as defined in this case are thresholds relating to claims, penalties, withholding, payments, required levels of insurance, small business size standards, liquidated damages, *etc.* This report does not address thresholds that are not acquisition-related.

2. What acquisition-related thresholds are not subject to escalation adjustment under this case?

The statute does not permit escalation of acquisition-related thresholds established by the Davis Bacon Act, the Service Contract Act, or trade agreements.

The statute does not authorize DoD to escalate thresholds originating in Executive order or the implementing agency (such as the Department of Labor or the Small Business Administration), unless the Executive order or agency regulations are first amended.

3. How did DoD analyze a statutory acquisition-related threshold?

If an acquisition-related threshold is based on statute, the matrix at {*to be provided in final rule*} identifies the statute, and the statutory threshold, both the original threshold and any revision to it in 2006.

With the exception of thresholds set by the Davis-Bacon Act, Service Contract Act, and trade agreements, the statute requires that the FAR Council adjust the acquisition-related thresholds for inflation using the Consumer Price Index (CPI) for all-urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are only subject to escalation from that date forward. For purposes of this proposed rule, the matrix includes calculation of escalation based on the CPI from October 2000 to April 2010. Inflation from the average CPI value for 2007 to the average value for 2008 was 3.8 percent. DoD has currently estimated the inflation for the next year at 4.2 percent, but will subsequently adjust as necessary before issuance of the final rule. Acquisition-related thresholds in statutes that took effect after October 1, 2000, are escalated from the date that they took effect. Once the escalation factor is applied to the acquisition-related threshold, then the threshold must be rounded as follows:

<$10,000	Nearest $500
$10,000–<$100,000 ..	Nearest $5,000
$100,000–<$1,000,000.	Nearest $50,000
$1,000,000 or more ..	Nearest $500,000

The calculations in this proposed rule are all based on the base year amount, because escalated amounts in the 2005 rule were subject to rounding and using them as the base would distort future calculations.

In 2005, thresholds of $1,000, $10,000, $100,000, and $1,000,000, although subject to inflation calculation, did not actually change, because the inflation in 2005 was insufficient to overcome the rounding requirements. These thresholds will now escalate because of 5 additional years of inflation.

Section 807(c) of the statute states that this statute supersedes the applicability of any other provision of law that provides for the adjustment of any acquisition-related threshold that is adjustable under this statute. The thresholds for defining a major system were previously stated in Fiscal Year 1990 constant dollars for DoD and in Fiscal Year 1980 constant dollars for civilian agencies. The 2005 rule converted these major system thresholds to current year dollars, as of the date that the statute was enacted, that will now be adjusted every 5 years.

This proposed rule has been coordinated with the Small Business Administration in areas of the regulation for which they are the lead agency.

4. How does DoD analyze a nonstatutory acquisition-related threshold?

No statutory authorization is required to escalate thresholds that were set as policy within the DFARS. Escalation of the DFARS policy acquisition-related thresholds is generally recommended using the same formula applied to the statutory thresholds, unless a reason has been provided for not doing so. Escalation is calculated using the same procedures as were explained for the statutory thresholds, to provide consistency.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

C. Regulatory Flexibility Act

DoD does not anticipate that this rule will have a substantial economic impact on small business, because the adjustment of acquisition-related thresholds for inflation is intended to maintain the status quo. DoD invites comments from small businesses and other interested parties. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D003) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does apply. The proposed changes to the DFARS do not impose new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*. They maintain the current information collection requirements at the status quo by adjusting the thresholds for inflation. Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 205, 207, 208, 209, 211, 215, 216, 217, 219, 225, 228, 232, 237, 246, 250, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 205, 207, 208, 209, 211, 215, 216, 217, 219, 225, 228, 232, 237, 246, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.303 [Amended]

2. Section 205.303 is amended by removing "$5.5 million" and adding in its place "$6.5 million" in the following places:

a. In paragraph (a)(i) introductory text, in the first and second sentences;

b. In paragraph (a)(i)(A), in the second sentence; and

c. In paragraph (a)(i)(B), in the first and second sentences.

PART 207—ACQUISITION PLANNING

207.170–3 [Amended]

3. Section 207.170–3 is amended in paragraph (a) introductory text by removing "$5.5 million" and adding in its place "$6 million".

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.405–70 [Amended]

4. Section 208.405–70 is amended by removing "$100,000" and adding in its place "$150,000" in the following places:

a. Paragraph (b) introductory text; and

b. Paragraph (c) introductory text.

PART 209—CONTRACTOR QUALIFICATIONS

209.104–1 [Amended]

5. Section 209.104–1 is amended in paragraph (g)(i)(A) introductory text by removing "$100,000" and adding in its place "$150,000".

6. Section 209.104–70 is amended in paragraph (a) by removing "$100,000" and adding in its place "$150,000".

209.409 [Amended]

7. Section 209.409 is amended in paragraph (b) by removing "$100,000" and adding in its place "$150,000".

PART 211—DESCRIBING AGENCY NEEDS

211.503 [Amended]

8. Section 211.503 is amended in paragraph (b), in the first and second sentences, by removing "$550,000" and adding in its place "$650,000".

PART 215—CONTRACTING BY NEGOTIATION

215.407–2 [Amended]

9. Section 215.407–2 is amended in paragraph (e)(1) by removing "$1 million" and adding in its place "$1.5 million".

PART 216—TYPES OF CONTRACTS

216.505–70 [Amended]

10. Section 216.505–70 is amended by removing "$100,000" and adding in its place "$150,000" in the following places:

a. In paragraph (a)(2);

b. In paragraph (b) introductory text; and

c. In paragraph (c) introductory text.

PART 217—SPECIAL CONTRACTING METHODS

217.170 [Amended]

11. Section 217.170 is amended in paragraph (d)(1)(i) by removing "$572.5 million" and adding in its place "$637.5 million".

217.171 [Amended]

12. Section 217.171 is amended in paragraph (a)(6) by removing "$572.5 million" and adding in its place "$637.5 million".

PART 219—SMALL BUSINESS PROGRAMS

13. Section 219.201 is amended by revising paragraph (d)(10)(A) to read as follows:

219.201 General policy.

(d) * * *

(10) * * *

(A) Reviewing and making recommendations for all acquisitions (including orders placed against Federal Supply Schedule contracts) over $10,000, except those under the simplified acquisition threshold that are totally set aside for small business concerns in accordance with FAR 19.502–2. Follow the procedures at PGI 219.201(d)(10) regarding such reviews.

* * * * *

219.502–1 [Amended]

14. Section 219.502–1 is amended in paragraph (2) by removing "$300,000" and adding in its place "$350,000".

219.502–2 [Amended]

15. Section 219.502–2 is amended by:

a. Removing "$1 million" from paragraph (a)(ii) and adding in its place "$1.5 million"; and

b. Removing "$300,000" from paragraph (a)(iii) and adding in its place "$350,000".

219.1005 [Amended]

16. Section 219.1005 is amended in paragraphs (a)(i)(B), (a)(i)(C), and (a)(i)(D) by removing "$300,000" and adding in its place "$350,000".

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

17. Section 225.103 is amended in paragraphs (a)(ii)(B)(*2*), (a)(ii)(B)(*3*), (b)(ii)(B), and (b)(ii)(C) by removing "$1,000,000" and adding in its place "$1.5 million".

225.7204 [Amended]

18. Section 225.7204 is amended as follows:

a. In paragraphs (a) and (b) by removing "$11.5 million" and adding in its place "$13 million".

b. In paragraph (c) by removing "$550,000" and adding in its place "$650,000".

225.7703–2 [Amended]

19. Section 225.7703–2 is amended in paragraphs (b)(2)(i) and (b)(2)(ii) by removing "$78.5 million" and adding in its place "$87 million".

PART 228—BONDS AND INSURANCE

228.102–1 [Amended]

20. Section 228.102–1 is amended in paragraph (1) by removing "$100,000" and adding in its place "$150,000".

PART 232—CONTRACT FINANCING

232.404 [Amended]

21. Section 232.404 is amended in paragraph (a)(9) by removing "$3,000" and adding in its place "the micro-purchase threshold".

232.502–1 [Amended]

22. Section 232.502–1 is amended in paragraph (b)(1) by removing "$55,000" and adding in its place "$65,000".

237.170–2 [Amended]

23. Section 237.170–2 is amended in paragraphs (a)(1) and (2) by removing "$78.5 million" and adding in its place "$87 million".

PART 246—QUALITY ASSURANCE

246.402 [Amended]

24. Section 246.402 is amended in the introductory text by removing "$250,000" and adding in its place "$300,000".

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.102–1 [Amended]

25. Section 250.102–1 is amended in paragraph (b) by removing "$55,000" and adding in its place "$65,000".

250.102–1–70 [Amended]

26. Section 250.102–1–70 is amended in paragraph (b)(1) by removing "$55,000" and adding in its place "$65,000".

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7000 [Amended]

27. Section 252.211–7000 is amended as follows:

a. By revising the clause date to read "(DATE)"; and

b. In paragraph (d) by removing "$1 million" and adding in its place "$1.5 million".

252.225–7003 [Amended]

28. Section 252.225–7003 is amended as follows:

a. By revising the clause date to read "(DATE)";

b. In paragraph (b)(1) by removing "$11.5 million" and adding in its place "$13 million"; and

c. In paragraph (b)(2)(i) by removing "$550,000" and adding in its place "$650,000".

252.225–7004 [Amended]

29. Section 252.225–7004 is amended as follows:

a. By revising the clause date to read "(DATE)"; and

b. In paragraph (b)(1) by removing "$550,000" and adding in its place "$650,000".

252.225–7006 [Amended]

30. Section 252.225–7006 is amended as follows:

a. By revising the clause date to read "(DATE)"; and

b. In paragraph (f)(1) by removing $550,000" and adding in its place $650,000".

252.249–7002 [Amended]

31. Section 252.249–7002 is amended as follows:

a. By revising the clause date to read "(DATE)";

b. In paragraph (d)(1) by removing $550,000" and adding in its place "$650,000"; and

c. In paragraphs (d)(2)(i) and (ii) by removing "$100,000" and adding in its place "$150,000".

[FR Doc. 2010–892 Filed 1–19–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R4-ES-2009-0090; 92210-1111-0000 B2]

Endangered and Threatened Wildlife and Plants; Initiation of Status Review for *Agave eggersiana* and *Solanum conocarpum*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Initiation of status review and solicitation of new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), announce the initiation of a status review for *Agave eggersiana* (no common name) and *Solanum conocarpum* (no common name). We conduct status reviews to determine whether the entities should be listed as endangered or threatened under the Act. Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threat to, these plant species.

DATES: To allow us adequate time to conduct this review, we request that we receive information no later than February 19, 2010. After this date you must submit information directly to the Field Office (see FOR FUTHER INFORMATION CONTACT section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket FWS-R4-ES-2009-0090 and then follow the instructions for submitting comments.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R4-ES-2009-0090; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Edwin Muniz, Field Supervisor, Caribbean Ecological Services Field Office , P.O. Box 491, Boqueró, Puerto Rico 00622, by telephone (787) 851-7297, or by facsimile (787) 851-7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial information, we request information on *Agave eggersiana* (no common name) and *Solanum conocarpum* (no common name). We request any additional information from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species and/or its habitat.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Propagation and planting efforts conducted for these species in the U.S. Virgin Islands.

Please include sufficient information with your submission to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing *A. eggersiana* and *S. conocarpum* is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), as per section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request specific comments and information as to what, if any, critical habitat you think should be proposed for designation if the species are proposed for listing, and why such habitat meets the requirements of the Act. Specifically, for areas within the geographical range currently occupied by these species, we request data on:

(1) The amount and distribution of *A. eggersiana* and *S. conocarpum* habitat;

(2) The physical and biological features of *A. eggersiana* and *S. conocarpum* habitat that are essential to the conservation of the species;

(3) Special management considerations or protections that the features essential to the conservation of *A. eggersiana* and *S. conocarpum* may require, including managing for the potential effects of climate change;

(4) Any areas that are essential to the conservation of *A. eggersiana* and *S. conocarpum* and why;

(5) Land use designations and current or planned activities in *A. eggersiana* and *S. conocarpum* habitats and their possible impacts on proposed critical habitat;

(6) Conservation programs and plans that protect *A. eggersiana* and *S. conocarpum* and their habitat; and,

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential for the conservation of the species."

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. We will also post all hardcopy submissions on *http://www.regulations.gov*. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we received and used in preparing this finding, will be available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of the receipt of the petition. In this finding, we determine whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded by other pending proposals. We must publish these 12–month findings in the **Federal Register**.

Previous Federal Action

On November 21, 1996, we received a petition from the U.S. Virgin Islands Department of Planning and Natural Resources (DPNR) requesting that we list *Agave eggersiana* and *Solanum conocarpum* as endangered. On November 16, 1998, we published in the **Federal Register** (63 FR 63659) our finding that the petition to list *A. eggersiana* and *S. conocarpum* presented substantial information indicating that the requested action may be warranted and initiated a status review on these two plants. On September 1, 2004, the Center for Biological Diversity filed a lawsuit against the Department of the Interior and the Service alleging that the Service failed to publish a 12–month finding (*Center for Biological Diversity* v. *Norton,* Civil Action No. 1:04-CV-2553 CAP). In a Stipulated Settlement Agreement resolving that case, signed April 27, 2005, we agreed to submit our 12–month finding to the **Federal Register** by February 28, 2006.

On March 7, 2006, we published our 12–month finding (71 FR 11367) that listing of *A. eggersiana* and *S. conocarpum* was not warranted. We arrived at this finding because we did not have sufficient information to determine the true status of either *A. eggersiana* or *S. conocarpum* in the wild. Further, we could not determine if either species met the definition of threatened or endangered due to one or more of the five listing factors because we did not have sufficient evidence of which threats, if any, were affecting these species. On September 9, 2008, the Center for Biological Diversity filed a complaint challenging our 12–month finding (*Center for Biological Diversity v. Hamilton, Case No. 1:08-cv-02830 –CAP).* In a settlement agreement approved by the Court on August 21, 2009, the Service agreed to submit to the **Federal Register** a new 12–month finding for *A. eggersiana* by September 17, 2010, and a new 12–month finding for *S. conocarpum* by February 15, 2011.

This notice initiates a new status review for *A. eggersiana* and *S. conocarpum*; we are soliciting new information on the status of and potential threats to both species that will enable us to complete a review of the status of each species and the subsequent 12–month findings. We will base our new findings on a review of the best scientific and commercial information available, including all such information received as a result of this notice. For more information on the biology, habitat, and range of either species, please refer to our previous 90–day finding published in the **Federal Register** on November 16, 1998 (63 FR 63659), and our previous 12–month finding published in the **Federal Register** on March 7, 2006 (71 FR 11367).

Author

The primary author of this notice is the staff of the Caribbean Ecological Services Office, Boquerón, Puerto Rico.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 6, 2010

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. 2010–870 Filed 1–19–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 09022432–91321–03]

RIN 0648–XT72

Endangered and Threatened Species; Notice of Public Hearings on Proposed Critical Habitat Designation for the Cook Inlet Beluga Whales

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

ACTION: Notice of public hearings.

SUMMARY: On December 2, 2009, NMFS published a proposal to designate critical habitat for the endangered Cook Inlet beluga whale as required by the Endangered Species Act of 1973 (ESA), as amended. As part of that proposal, NMFS announced a public comment period to end on February 1, 2010, which was extended to March 3, 2010. NMFS has received requests for public hearings on this issue. In response, NMFS is announcing that hearings will be held at four locations in Alaska to provide additional opportunities and formats to receive public input.

DATES: Written comments must be received by March 3, 2010.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648–XT72", 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.

No comments will be posted for public viewing until after the comment period has closed. All comments received are part of the public record and will be generally 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mandy Migura, NMFS, 222 West 7th Avenue, Box 43, Anchorage, AK 99517, (907) 271–5006; Kaja Brix, NMFS, (907) 586–7235; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4(a)(3) of the ESA requires NMFS to designate critical habitat for threatened and endangered species. NMFS published an advanced notice of proposed rulemaking and a request for information on April 14, 2009 (74 FR 17131). On December 2, 2009, NMFS published a proposed rule to designate critical habitat for the endangered Cook Inlet beluga whale (74 FR 63080). On January 12, 2010, NMFS extended the public comment period to March 3, 2010 (75 FR 1852).

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary of Commerce shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In past ESA rulemakings, NMFS has conducted traditional public hearings, consisting of recorded oral testimony from interested individuals. This format, although providing a means of public input, does not provide opportunities for dialogue and information exchange. NMFS believes that the traditional public hearing format can be improved upon by also including a brief presentation on what may be considered topics of interest.

The preferred means for providing public comment to the official record is via written testimony prepared in advance of the meeting, which may also be presented orally. Blank "comment sheets" will be provided at the meetings for those without prepared written comments, and opportunity will also be provided for additional oral testimony. There is no need to register for these hearings.

In scheduling these public hearings, NMFS has anticipated that many affected stakeholders and members of the public may prefer to discuss the proposed critical habitat designation directly with staff during the public comment period. These public meetings are not the only opportunity for the public to provide input on this proposal. The public and stakeholders are encouraged to continue to comment and provide input to NMFS on the proposal (via correspondence, e-mail, and the Internet; see **ADDRESSES**, above) up until the scheduled close of the comment period on March 3, 2010.

Hearing Dates & Locations

Public hearings will be held in Anchorage, Wasilla, Soldotna, and Homer, Alaska. The specific dates and locations of these meetings are listed below:

(1) Soldotna: February 3, 2010, between 6 p.m. and 9 p.m. at the Kenai Peninsula Borough Assembly Chambers, George A. Navarre Kenai Peninsula Borough Administration Building, 144 N. Binkley Street, Soldotna, AK.

(2) Homer: February 4, 2010, between 6 p.m. and 9 p.m. at the Alaska Islands & Ocean Visitor Center, 95 Sterling Highway #1, Homer, AK.

(3) Wasilla: February 11 between 6 p.m. and 9 p.m. at the Best Western, Lake Lucille Inn, Iditarod Room, 1300 West Lake Lucille Drive, Wasilla, AK.

(4) Anchorage: February 12 between 6 p.m. and 9 p.m. in the Loussac Public Library, Wilda Marston Room, 3600 Denali Street, Anchorage, AK.

References

The proposed rule, economic analysis, maps, status reviews, and other materials relating to the proposed critical habitat designation can be found on the NMFS Alaska Region website *www.alaskafisheries.noaa.gov/*.

Authority: 16 U.S.C. 1533

Dated: January 13, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–997 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 12
Wednesday, January 20, 2010

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

Forest Service

Information Collection; Annual Wildfire Summary Report

AGENCY: Forest Service, USDA.

ACTION: Notice; Request for Comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection; Annual Wildfire Summary Report.

DATES: Comments must be received in writing on or before March 22, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Tim Melchert, Fire and Aviation Management, National Interagency Fire Center, Forest Service, USDA, 3833 S. Development Avenue, Boise, ID 83705.

Comments also may be submitted via facsimile to 208–387–5375 or by e-mail to: *tmelchert@fs.fed.us.*

The public may inspect comments received at National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID during normal business hours. Visitors are encouraged to call ahead to 208–387–5604 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Tim Melchert, Fire and Aviation Manager, National Interagency Fire Center, 208–387–5887. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual Wildfire Summary Report.

OMB Number: 0596–0025.

Expiration Date of Approval: June 30, 2010.

Type of Request: Extension of a currently approved collection.

Abstract: The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 (note) Sec. 10) requires the Forest Service to collect information about wildfire suppression efforts by State and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State and local fire fighting agencies. The Forest Service works cooperatively with State and local fire fighting agencies to support their fire suppression efforts.

State fire marshals use FS–3100–8 (Annual Wildfire Summary Report) to collect information for the Forest Service regarding State and local wildfire suppression efforts. Without this information, the Forest Service would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program. Forest Service managers evaluate the information to determine if the Cooperative Fire Program funds used by State and local fire agencies have improved fire suppression capabilities. The Forest Service shares the information with Congress as part of the annual request for funding for this program.

The information collected includes the number of fires responded to by State or local fire fighting agencies within a fiscal year, as well as the following information pertaining to such fires:

- Fire type (timber, structural, or grassland);
- Size (in acres) of the fires;
- Cause of fires (lightning, campfires, arson, *etc.*); and
- Suppression costs associated with the fires.

The data gathered is not available from other sources.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: State fire marshals.

Estimated Annual Number of Respondents: 50.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: January 13, 2010.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2010–975 Filed 1–19–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Application Package and Reporting Requirements for the Veterinary Medicine Loan Repayment Program (VMLRP)

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Food and Agriculture (NIFA), as part of its compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, invites the general public to comment on proposed information collection for the Veterinary Medicine Loan Repayment Program (VMLRP). This Notice initiates a 60-day comment period and prescribes the proposed application forms and program reporting requirements for the VMLRP that will be submitted to the

Office of Management and Budget (OMB) for review and approval. The NIFA may not conduct or sponsor, and the respondent is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

DATES: Comments regarding this information collection must be received on or before March 22, 2010 to be assured of having their full effect.

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

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

E-mail: vmlrp@nifa.usda.gov. Include the text "VMLRP Application Forms" in the subject line of the message.

Fax: (202) 401–7752.

Mail: paper, disk or CD–ROM submissions should be submitted to National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299.

Hand Delivery/Courier: National Institute of Food and Agriculture; U.S. Department of Agriculture; Room 2258, Waterfront Centre; 800 9th Street, SW; Washington, DC 20024.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Gary Sherman; National Program Leader, Veterinary Science; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW.; Washington, DC 20250–2220; *Voice:* 202–401–4952; *Fax:* 202–401–6156; *E-mail: gsherman@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Collection

Title: Application Package and Reporting Requirements for the Veterinary Medicine Loan Repayment Program (VMLRP).

Abstract: NIFA is proposing these application forms and reporting requirements for the Veterinary Medicine Loan Repayment Program (VMLRP) as authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). This information collection applies to Subpart B of 7 CFR Part 3431.

Type of Information Collection Request: Intent to request OMB approval to establish a new information collection for VMLRP applications.

Form Numbers: NIFA–01–10 Applicant Information, NIFA–02–10 Personal Statement, NIFA–03–10 List of Recommenders, NIFA–04–10 Loan Information Form, NIFA–05–10 Contract, NIFA–06–10 Certifications for Application, NIFA–07–10 Intent of Employment, NIFA–08–10 Recommendation Form.

Need and Use of the Information: The NIFA will carry out NVMSA by entering into educational loan repayment agreement with veterinarians who agree to provide veterinary services in veterinarian shortage situations for a determined period of time. The information proposed for collection permits the NIFA to request from VMLRP applicants information related to eligibility, qualifications, career interests, and recommendations necessary to evaluate their applications for repayment of educational indebtedness in return for agreeing to provide veterinary services in veterinarian shortage situations. The information proposed for collection will also be used to determine an applicant's eligibility for participation in the program. NIFA plans to publish a Request for Applications (RFA) for VMLRP loan repayment applications from individual veterinarians. These forms will be made available at the NIFA VMLRP website as a PDF-fillable document (to be printed and then returned by fax or mail), and includes questions requiring check boxes or text with a word limitation to minimize the burden for applicants and reviewers. Submitted application forms will be reviewed and evaluated by a peer panel according to the criteria identified in the published RFA.

Method of Collection: Collection allows program applicants to make all submissions by fax, courier, or regular mail. The information collection is required of all applicants who request to enter into an agreement with the Secretary of USDA for VMLRP participation. NIFA plans to provide a web-based option within two years, to allow applicants to complete and submit their applications online.

Frequency of Response: Annual application.

Affected Public: Applicants, recommenders, financial institutions, and employers of applicants.

Type of Respondents: Applicants, Veterinarians, organizational officials, and employers of applicants.

The estimated annual reporting burden is as follows:

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Applicants:				
Applicant Information	100	1	1	100
Personal Statement	100	1	6	600
List of Recommenders	100	1	.5	50
Loan Information	100	2	.5	100
Contract	100	1	.25	25
Certification for Applications	100	1	.25	25
Intent of Employment	100	1	1	100
Applicants subtotal	100			1,000
Recommenders:				
Recommendation	300	1	1	300
Recommenders subtotal	300	1	1	300
Financial Institutions:				
Loan Information	200	1	.25	50
Financial Institutions subtotal	200	1	.25	50

Type of respondents	Number of respondents	Estimated number of responses per respondent	Average burden hours per response	Annual burden hours requested
Grand Total	600			1,350

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection. All comments will become a matter of public record.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the VMLRP, including whether the information will have practical utility; (b) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information), including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the public burden through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Obtaining a Copy of the Information Collection: A copy of the information collection is available at the VMLRP Web site: *http://www.nifa.usda.gov/vmlrp.*

Proposed VMLRP Application Forms and Reporting Requirements

Pursuant to the requirements enacted in the NVMSA of 2004 (as revised), and the implementing regulation for this Act, the National Institute of Food and Agriculture hereby proposes to implement:

I. Application Forms

The following forms are to be completed and submitted by the applicant by the established deadline.

(a) *Applicant Information Form:* Collects relevant identifying, contact, and employment information from the applicant. Authorizes the disclosure of information that confirms the applicant is not under a service obligation or has a Federal judgment lien against his/her property.

(b) *Personal Statement:* Includes a discussion of applicant knowledge, skills, abilities, and experience relative to the shortage situation applied for.

(c) *List of Recommenders:* Identifies colleagues that can speak to the applicant's capability to fulfill program obligations. A minimum of three recommendations is required for each application.

(d) *Loan Information Form:* Authorizes the disclosure of information to the lenders and their authorized collection agents to confirm that the applicant's loans are current in their repayment status.

(e) *Contract:* A legal agreement that binds the selected applicant and the Secretary of USDA and/or NIFA Director to the terms and conditions for participation in the VMLRP, including obligations of both parties.

(f) *Certifications for Application:* Validates the contractual agreement, accuracy of information provided by the applicant, and request for confidential recommendations.

(g) *Intent of Employment:* Section 1 provides information on the shortage situation the applicant intends to fill upon receipt of a VMLRP award. Section 2 confirms the applicant's ability to secure an offer of employment or establish and/or maintain a practice in a veterinary shortage situation within the time period specified in the VMLRP service agreement offer.

II. Recommendation Form

To be completed and submitted by colleagues identified by the applicant no later than 15 days after the established application deadline. Includes ratings and short answers to assess applicant's capabilities to provide veterinary services in the specific shortage situation the applicant is applying for. At least three separate recommendations are required.

III. Reporting Requirements

Program participants will be required to verify that the terms of the VMLRP contract are being met on a quarterly basis. Subsequent quarterly loan repayments will not be disbursed until this verification is provided. This report will be due ten business days after the end of each three month interval during the VMLRP contract for the previous three month period and must include:

(a) A listing of states, counties, and/or insular areas served.

(b) A listing of veterinary services and activities provided in the shortage situation.

(c) Percentage time (on a 40-hour week basis) providing service to veterinary shortage situation identified in the agreement.

Program participants are responsible for notifying NIFA of any changes in the service being provided in the specified shortage situation during the three-year period. It is strongly recommended that program participants advise NIFA of these changes at least two months in advance to allow sufficient processing time. Failure to provide the updated information may result in the termination of the VMLRP contract and the program participant may be subject to penalties as outlined in Section C, Paragraph 3 of the contract.

Done at Washington, DC, January 12, 2010.

Dr. Molly Jahn,

Acting Under Secretary for Research, Education, and Economics.

[FR Doc. 2010–904 Filed 1–19–10; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ochoco National Forest, Lookout Mountain Ranger District; Oregon; Mill Creek; Allotment Management Plans EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ochoco National Forest is preparing an environmental impact statement (EIS) to analyze the effects of changing grazing management in four grazing allotments on the Lookout Mountain Ranger District. These four allotments are: Cox, Craig, Mill Creek, and Old Dry Creek. The proposed action will reauthorize term grazing permits, make rangeland improvements, improve transitory range condition, manage livestock use and distribution to facilitate the improvement of riparian conditions, including streambank stability, riparian vegetation, and water temperature, and will conduct riparian restoration activities on some streams in the project area. These actions are needed to achieve and maintain consistency with the Ochoco National

Forest Land and Resource Management Plan, as amended.

DATES: Comments concerning the scope of the analysis must be received by February 19, 2010. The draft environmental impact statement is expected to be completed and available for public comment in June 2010. The final environmental impact statement is expected to be completed in September 2010.

ADDRESSES: Send written comments to Bill Queen, District Ranger, Lookout Mountain District, Ochoco National Forest, 3160 NE. Third Street, Prineville, Oregon 97754. Alternately, electronic comments may be sent to *comments-pacificnorthwest-ochoco@fs.fed.us.* Electronic comments must be submitted as part of the actual e-mail message, or as an attachment in plain text (.txt), Microsoft Word (.doc), rich text format (.rtf), or portable document format (.pdf).

FOR FURTHER INFORMATION CONTACT: Tory Kurtz, Project Leader, at 3160 NE. Third Street, Prineville, Oregon 97754, or at (541) 416–6500, or by e-mail at *tlkurtz@fs.fed.us.*

Responsible Official: The responsible official will be Jeff Walter, Forest Supervisor, Ochoco National Forest, 3160 NE. Third Street, Prineville, Oregon 97754.

SUPPLEMENTARY INFORMATION:

Purpose and Need. The purpose of this proposal is to reauthorize livestock grazing consistent with Forest Plan standards and guidelines. There is a need to make range improvements and change livestock management to move towards desired conditions for stream shade and bank stability. Based on surveys many of the streams in the project area do not meet the desired condition for shade or bank stability. Livestock grazing is one of the factors that contribute to low levels of shade and unstable stream banks. Active riparian restoration activities will facilitate the achievement of the desired condition.

Proposed Action. The proposed action includes a variety of management strategies and activities, including active management of livestock, resting of some areas while riparian resources improve, implementation of deferred rotation grazing systems, new water developments, relocation or improvement of existing water developments, protection of heritage resources, planting of riparian hardwoods, placing logs and rocks in and along stream channels, protection of riparian vegetation and streambanks, and temporary reductions in AUMs.

Issues. Preliminary issues identified include the potential effect of the proposed action on livestock grazing, on heritage resources, on fisheries, on sensitive plants, and on the introduction and/or spread of invasive plants, as well as the cumulative effects of the proposed action where associated activities overlap with other management activities.

Comment. Public comments about this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by June, 2010. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The final EIS is scheduled to be available September, 2010.

The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS of the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Ochoco National Forest. The responsible official will decide whether and how to reissue grazing permits in the Cox, Craig, Mill Creek and Old Dry Creek allotments. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place.

The Mill Creek Allotment Management Plans decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (35 CFR Part 215).

Dated: January 12, 2010.

William R. Queen,

District Ranger.

[FR Doc. 2010–811 Filed 1–19–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of a Public Meeting on Administration of the Business and Industry Guaranteed Loan Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the USDA Rural Development Mission area, will hold a public meeting entitled "Business and Industry Guaranteed Loan Program National Lender Roundtable."

DATES: The meeting will be held on February 2, 2010, in Dallas, Texas at the Hyatt Regency DFW Airport Hotel from 8 a.m. to 5 p.m. CST.

ADDRESSES: The public meeting will be held at the Hyatt Regency DFW Airport Hotel, 2334 N. International Parkway, DFW Airport, TX 75261; *Telephone:* 972–453–1234. A block of rooms has been reserved in the name of USDA/ARRA.

Instructions for Participation: Pre-registration is encouraged by e-mailing your intent to attend to Rick Bonnet at *rick.bonnet@wdc.usda.gov.* On-site registration will begin at 8:30 a.m. CST, and the workshop will begin at 9 a.m. and conclude by 4:15 p.m.

If you are unable to attend, please feel free to submit written comments and suggestions for program enhancements to Rick Bonnet by March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Rick Bonnet, Rural Business-Cooperative Service, Room 6871, Stop 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, *Telephone:* 202–720–1804. *E-mail: rick.bonnet@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be conducted by representatives of the Department of Agriculture. The purpose of this event is to provide an open forum to solicit feedback on the administration and delivery of the Business and Industry Guaranteed Loan Program stimulus assistance provided pursuant to Title 1 of Division A of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5) commensurate with the objective(s) of improving lender participation in the Program and increasing Program funds utilization.

Dated: January 7, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–759 Filed 1–19–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet February 5, 2010 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Handout Discussion (3) Public Comment, (4) Financial Report (5) Sub-committees (6) Matters before the group (7) Discussion—approval of projects (8) Next agenda and meeting date.

DATES: The meeting will be held on February 5, 2010, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St. Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo, Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–6658; e-mail *windmill@willitsonline.com.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by February 1, 2010. Public comment will have the opportunity to address the committee at the meeting.

Dated: January 6, 2010.

Lee Johnson,

Designated Federal Official.

[FR Doc. 2010–810 Filed 1–19–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tri-County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Thursday February 18, 2010, from 5 p.m. until 8 p.m., in Deer Lodge, Montana. The purpose of the meeting is to review funding proposals for Title II funding.

DATES: Thursday, February 18, 2010, from 5 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the USDA building located 1002 Hollenback Road, Deer Lodge, Montana (MT 59722).

FOR FURTHER INFORMATION CONTACT: Patty Bates, Committee Coordinator, Beaverhead-Deerlodge National Forest, 420 Barrett Road, Dillon, MT 59725 (406) 683–3979; E–MAIL *pbates@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda for this meeting include discussion about (1) Accomplishments during 2009; (2) election of a new chairperson; and (3) budget, priorities and funding for new project proposals. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 11, 2010.

David R. Myers,

Designated Federal Official.

[FR Doc. 2010–812 Filed 1–19–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program; 2010 Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments address changes in the Consumer Price Index, as required under the Richard B. Russell National School Lunch Act. The 2010 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures that are extended nationwide by enactment of the Fiscal Year 2008 Consolidated Appropriations Act. The 2010 rates are also presented individually, as separate operating and administrative rates of reimbursement,

to show the effect of the Consumer Price Index adjustment on each rate.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Head, CACFP and SFSP Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, 703–305–2590.

SUPPLEMENTARY INFORMATION: This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notice published at 48 FR 29114, June 24, 1983).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this notice have the meaning ascribed to them under 7 CFR Part 225 of the Summer Food Service Program regulations.

Background

This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program (SFSP). As required under sections 12 (42 U.S.C. 1760(f)) and 13 (42 U.S.C. 1761) of the Richard B. Russell National School Lunch Act (NSLA), and SFSP regulations in 7 CFR Part 225, the United States Department of Agriculture (USDA) announces the adjustments in SFSP payments for meals served to participating children during calendar year 2010.

The 2010 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. Section 738 of the Consolidated Appropriations Act, 2008, Public Law 110–161, enacted on December 26, 2007, extends these procedures to all States. Since January 1, 2008, reimbursement has been based solely on a "meals times rates" calculation, without comparison to actual or budgeted costs.

Sponsors receive reimbursement that is determined by the number of reimbursable meals served multiplied by the combined rates for food service operations and administration. However, the combined rate is based on separate operating and administrative rates of reimbursement, each of which is adjusted differently for inflation.

Calculation of Rates

The combined rates are constructed from individually authorized operating and administrative reimbursements. Simplified procedures provide flexibility, enabling sponsors to manage their reimbursements to pay for any allowable cost, regardless of the cost category. Although the requirement to categorize costs as "operational" or "administrative" has been eliminated, this does not diminish the sponsors' responsibility for ensuring proper administration of the Program, while providing the best possible nutrition benefit to children.

The operating and administrative rates are calculated separately. However, the calculations of adjustments for both are based on the same set of changes in the *Food Away From Home* series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. They represent a 2.1 percent increase in this series for the 12 month period, from November 2008 through November 2009 (from 220.043 in November 2008 to 224.633 in November 2009).

Table of 2010 Reimbursement Rates

Presentation of the 2010 maximum per meal rates for meals served to children in SFSP combines the results from the calculations of operational and administrative payments, which are further explained in this notice. The total amount of payments to State agencies for disbursement to SFSP sponsors will be based upon these adjusted combined rates and the number of meals of each type served. These adjusted rates will be in effect from January 1, 2010 through December 31, 2010.

SUMMER FOOD SERVICE PROGRAM—2010 REIMBURSEMENT RATES (COMBINED)

Per meal rates in whole or fractions of U.S. dollars	All states except Alaska and Hawaii		Alaska		Hawaii	
	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	1.8475	1.8125	3.0000	2.9450	2.1650	2.1250
Lunch or Supper	3.2475	3.1950	5.2675	5.1825	3.8000	3.7375
Snack	0.7625	0.7450	1.2450	1.2175	0.8975	0.8775

Operating Rates

The portion of the SFSP rates for operating costs is based on payment amounts set in section 13(b)(1) of the NSLA (42 U.S.C.1761(b)(1)). They are rounded down to the nearest whole cent, as required by section 11(a)(3)(B) of the NSLA (42 U.S.C. 1759(a)(3)(B)).

SUMMER FOOD SERVICE PROGRAM—OPERATING COMPONENT OF 2010 REIMBURSEMENT RATES

Operating rates in U.S. dollars, rounded down to the nearest whole cent	All states except Alaska and Hawaii	Alaska	Hawaii
Breakfast	1.68	2.73	1.97
Lunch or Supper	2.94	4.77	3.44

SUMMER FOOD SERVICE PROGRAM—OPERATING COMPONENT OF 2010 REIMBURSEMENT RATES—Continued

Operating rates in U.S. dollars, rounded down to the nearest whole cent	All states except Alaska and Hawaii	Alaska	Hawaii
Snack	0.68	1.11	0.80

Administrative Rates

The administrative cost component of the reimbursement is authorized under section 13(b)(3) of the NSLA (42 U.S.C. 1761(b)(3)). Rates are higher for sponsors of sites located in rural areas and for "self-prep" sponsors that prepare their own meals, at the SFSP site or at a central facility, instead of purchasing them from vendors. The administrative portion of SFSP rates are adjusted, either up or down, to the nearest quarter-cent.

SUMMER FOOD SERVICE PROGRAM—ADMINISTRATIVE COMPONENT OF 2010 REIMBURSEMENT RATES

Administrative rates in U.S. dollars, adjusted, up or down, to the nearest quarter-cent	All states except Alaska and Hawaii		Alaska		Hawaii	
	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	0.1675	0.1325	0.2700	0.2150	0.1950	0.1550
Lunch or Supper	0.3075	0.2550	0.4975	0.4125	0.3600	0.2975
Snack	0.0825	0.0650	0.1350	0.1075	0.0975	0.0775

Authority: Sections 9, 13, and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761, and 1762a, respectively).

Dated: January 13, 2010.

Julia Paradis,

Administrator.

[FR Doc. 2010–978 Filed 1–19–10; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the Massachusetts 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 orientation, planning and briefing meetings of the Massachusetts Advisory Committee will convene at 12 p.m. on Wednesday, February 3, 2010, at the Harvard Law School Alumni Building, 125 Mount Auburn Street, Cambridge, Massachusetts, 02138. The purpose of the orientation meeting is to review the rules of operation for the Advisory Committee. The purpose of the planning meeting is for the Committee to begin project planning. The purpose of the briefing meeting is hear presentations from expert(s) about topical civil rights issues.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Wednesday, March 3, 2010. The address is: U.S. Commission on Civil Rights, Eastern Regional Office, 624 Ninth Street, NW., Suite 740, 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.*

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, January 14, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–941 Filed 1–19–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; 2011 New York City Housing and Vacancy Survey

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 22, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alan Friedman, U.S. Census Bureau, Room 7H590H, Washington, DC 20233–8500; *phone:* (301) 763–5664; or: *alan.friedman@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct the 2011 New York City Housing and Vacancy Survey (NYCHVS) under contract for the City of New York. The primary purpose of the survey is to measure the rental vacancy rate, which is the primary factor in determining the continuation of rent control regulations. Other survey information is used by city and state agencies for planning purposes as well as the private sector for business decisions. New York is required by law to have such a survey conducted every three years.

Information to be collected includes: Age, gender, race, Hispanic origin, and relationship of all household members; employment status, education level, and income for persons aged 15 and above. Owner/renter status (tenure) is asked for all units, including vacant units. Utility costs, monthly rent, availability of kitchen and bathroom facilities, maintenance deficiencies, neighborhood suitability, and other specific questions about each unit such as number of rooms and bedrooms are also asked. The survey also poses a number of questions relating to handicapped accessibility. For vacant units, a shorter series of similar questions is asked. Finally, all vacant units and approximately five percent of occupied units will be reinterviewed for quality assurance purposes.

The Census Bureau compiles the data in tabular format based on specifications of the survey sponsor, as well as non-identifiable microdata. Both types of data are also made available to the general public through the Census Internet site. Note, however, that the sponsor, like the general public, does not receive any information that identifies any sample respondent or household.

II. Method of Collection

All information will be collected via personal interview.

III. Data

OMB Control Number: 0607–0757.

Form Number: H–100.

Type of Review: Regular submission.

Affected Public: Primarily households and some rental offices/realtors (for vacants).

Estimated Number of Respondents:

17,800 occupied units,
950 vacant units,
1,900 reinterviews.

Estimated Time per Response:

30 minutes—occupied,
10 minutes—vacant,
10 minutes—reinterview.

Estimated Total Annual Burden Hours: 9,375.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C.—Section 8b and Local Emergency Housing Rent Control Act, Laws of New York (Chapters 8603 and 657).

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: January 14, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–988 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 7 of the 2008 Panel

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 22, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members' participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2008 panel began in September 2008 and is currently scheduled for 4 years and will include 13 waves of interviewing. Approximately 65,300 households were selected for the 2008

panel, of which 42,032 households were interviewed. We estimate that each household contains 2.1 people, yielding 88,267 person-level interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2010. The total annual burden for 2008 Panel SIPP interviews would be 132,400 hours in FY 2010.

The topical modules for the 2008 Panel Wave 7 collect information about:

- Assets, Liabilities, and Eligibility;
- Medical Expenses and Utilization of Health Care;
- Work-Related Expenses and Child Support Paid.

Wave 7 interviews will be conducted from September 1, 2010 through December 31, 2010.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews require an additional 1,553 burden hours in FY 2010.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 13 times (13 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Control Number: 0607–0944.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 88,267 people per wave.

Estimated Time per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 133,953.[1]

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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: January 13, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–890 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–07–P

[1] Error! Main Document Only. (88,267 × .5 hr × 3 waves + 3,100 × .167 hr × 3 waves).

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: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 8, 2009, the U.S. Department of Commerce (the Department) published the preliminary results of the August 1, 2007 through July 31, 2008 administrative review of the antidumping duty order on floor-standing, metal-top ironing tables from the People's Republic of China (PRC). *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 46083 (September 8, 2008) (*Preliminary Results*). This review covers, Foshan Shunde Yongjian Housewares & Hardwares Co., Ltd. (Foshan Shunde), which we have determined to be part of the PRC-wide entity. We invited interested parties to comment on the *Preliminary Results.*

Based on our analysis of the comments received, we have made no changes to the findings presented in our *Preliminary Results.* The weighted average dumping margin is listed below in the section entitled "Final Results of Review."

DATES: *Effective Date:* January 20, 2010.

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

We published in the **Federal Register** the preliminary results of this administrative review on September 8, 2009. *See Preliminary Results.*

Following the *Preliminary Results*, on October 8, 2009, the Department received case briefs from Foshan Shunde and from Polder, Inc., an importer of the subject merchandise. On October 13, 2009, Home Products International, Inc., the Petitioner in this proceeding, submitted a rebuttal brief.

Scope of the Order

For purposes of the 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, the order specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of the 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 the 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 were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new 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.

Separate Rates

Foshan Shunde requested a separate, company-specific antidumping duty rate. In the *Preliminary Results*, we found that Foshan Shunde provided inaccurate and unreliable data, and as such, the Department was unable to determine Foshan Shunde's eligibility for separate rate status. Thus, the Department determined Foshan Shunde is properly considered to be part of the PRC-wide entity. *See Preliminary Results* at 46085; *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). We have not received any information since the *Preliminary Results* with respect to Foshan Shunde that would warrant changing our separate-rate determination. Therefore, in these *Final Results*, we have continued to treat Foshan Shunde as part of the PRC-wide entity because Foshan Shunde's responses contain widespread and pervasive discrepancies, for which the Department is unable to parse any reliable data.

Analysis of Comments Received

All issues raised in the case briefs by the parties and to which we have responded are fully addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled "Issues and Decision Memorandum for the Final Results in the Administrative Review of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China", (January 6, 2010) (Issues and Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), room 1117 of the Department of Commerce. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://trade.gov/ia.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from interested parties, we have made no changes to the analysis employed in the Preliminary Results.

Final Results of Review

We determine that the following antidumping duty margins exist in these final results:

Exporter	Margin (percent)
PRC-wide Entity (which includes Foshan Shunde)	157.68

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these 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 Foshan Shunde the cash deposit rate will be 157.68 percent; (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 that 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; 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 further notice.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3).

Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 6, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Issues in Decision Memorandum

Comment 1: Application of the PRC-wide rate to Foshan Shunde.

Comment 2: Application of Total Adverse Facts Available to Foshan Shunde.

Comment 3: Whether Substantial Deficiencies exist in Foshan Shunde's Responses.

Comment 4: Whether the Department Should Calculate a Separate Rare for Foshan Shunde.

[FR Doc. 2010–1079 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–PTO–C–2009–0058]

National Medal of Technology and Innovation Call for 2010 Nominations

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: The Department of Commerce (United States Patent and Trademark Office) is accepting nominations for its National Medal of Technology and Innovation (NMTI).

Since establishment by Congress in 1980, the President of the United States has awarded the National Medal of Technology and Innovation (formerly known as the National Medal of Technology) annually to our Nation's leading innovators. If you know of a candidate who has made an outstanding, lasting contribution to the economy through the promotion of technology or technological manpower, you may obtain a nomination form from: *http://www.uspto.gov/about/nmti/index.jsp*.

DATES: The deadline for submission of a nomination is March 31, 2010.

ADDRESSES: The NMTI Nomination form for the year 2010 may be obtained by visiting the Web site at *http://www.uspto.gov/about/nmti/index.jsp.* Nomination applications should be submitted to Richard Maulsby, Program Manager, National Medal of Technology and Innovation Program, by electronic mail to: *NMTI@uspto.gov* or by mail to: Richard Maulsby, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

FOR FURTHER INFORMATION CONTACT: Richard Maulsby, Program Manager, National Medal of Technology and Innovation Program, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, telephone (571) 272–8333, or electronic mail: *nmti@uspto.gov.*

SUPPLEMENTARY INFORMATION:

Background: Enacted by Congress in 1980, the Medal of Technology was first awarded in 1985. On August 9, 2007, the President signed the America COMPETES (Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science) Act of 2007. The Act amended Section 16 of the Stevenson-Wydler Technology Innovation Act of 1980, changing the name of the Medal to the "National Medal of Technology and Innovation." The Medal is the highest honor awarded by the President of the United States to America's leading innovators in the field of technology, and is given annually to individuals, teams, or companies who have made outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental or social well-being of the United States.

The primary purpose of the National Medal of Technology and Innovation is to recognize American innovators whose vision, creativity, and brilliance in moving ideas to market has had a profound and lasting impact on our economy and way of life. The Medal highlights the national importance of fostering technological innovation based upon solid science, resulting in commercially successful products and services.

Eligibility and Nomination Criteria: Information on eligibility and nomination criteria is provided on the Nominations Guidelines Form at *http://www.uspto.gov/about/nmti/index.jsp.*

Dated: January 12, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–980 Filed 1–19–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–944]

Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce ("the Department") and the International Trade Commission ("ITC"), the Department is issuing a countervailing duty order on certain oil country tubular goods ("OCTG") from the People's Republic of China ("PRC"). Also, as explained in this notice, the Department is amending its final determination to correct certain ministerial errors.

DATES: *Effective Date:* January 20, 2010.

FOR FURTHER INFORMATION CONTACT: David Neubacher or Shane Subler, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5823 and (202) 482–0189, respectively.

Background

The Department published its final determination on December 7, 2009. *See Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) ("*Final Determination*").

On January 13, 2010, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(ii) and 705(d) of the Tariff Act of 1930, as amended ("the Act"), that an industry in the United States is threatened with material injury by reason of subsidized imports of subject merchandise from the PRC. *See Certain Oil Country Tubular Goods from China,* USITC Investigation No. 701–TA–463 (Final), USITC Publication 4124 (January 2010). Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The scope of this order consists of certain oil country tubular goods ("OCTG"), which are hollow steel

products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive.

Amendment to the Final Determination

On December 14, 2009, petitioners United States Steel Corporation ("U.S. Steel") and TMK IPSCO *et al.*[1] (collectively, "Petitioners")[2] filed timely allegations that the Department made three ministerial errors in its *Final Determination.* No interested party filed a rebuttal to Petitioners' allegations.

After analyzing the allegations, we have determined, in accordance with 19 CFR 351.224(e), that we made these three ministerial errors in the calculations.[3] We have also corrected an additional ministerial error.

In summary, U.S. Steel alleged that the Department made errors in the calculation of the electricity subsidy rate for Wuxi Seamless Oil Pipe Co., Ltd. ("WSP") and applied incorrect benchmark interest and inflation rates to certain WSP loans in the policy lending program calculation. TMK IPSCO *et al.* alleged that the Department omitted the electricity subsidy rate from Jiangsu Changbao Steel Tube Co., Ltd.'s ("Changbao") overall subsidy rate. We agree with Petitioners that these errors constitute ministerial errors. Also, we identified a ministerial error in the benefit calculation for the policy lending program for Tianjin Pipe (Group) Co. ("TPCO"). We are correcting these errors with this notice. *See* Ministerial Error Allegations Memo at pages 2–3.

As a result of these corrections, WSP's countervailing duty rate changed from 14.61 percent to 14.95 percent, Changbao's rate changed from 11.98 percent to 12.46 percent, and TPCO's rate changed from 10.36 percent to 10.49 percent. The countervailing duty rate for Zhejiang Jianli Enterprise Co., Ltd. is unchanged. The countervailing duty rate for all others changed from 13.20 percent to 13.41 percent. In accordance with 19 CFR 351.224(e), we are amending the *Final Determination* to reflect these changes.

Countervailing Duty Order

In accordance with section 706(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection ("CBP") to assess, upon further instruction by the Department, countervailing duties equal to the amount of the net countervailable subsidy for all relevant entries of OCTG from the PRC.

According to section 706(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based upon the threat of material injury. Section 706(b)(1) of the Act states, "If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a)." In addition, section 706(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated countervailing duties posted since the Department's preliminary countervailing duty determination, if the ITC's final determination is threat-based. Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's *Preliminary Determination*[4] was published in the **Federal Register**, section 706(b)(2) of the Act is applicable.

Therefore, the Department will direct CBP to reinstitute suspension of liquidation,[5] and to assess, upon further

[1] TMK IPSCO, V&M Star L.P., Wheatland Tube Corp., Evraz Rocky Mountain Steel, and The United Steelworkers.

[2] Maverick Tube Corporation is also a petitioner in this investigation, but the company did not file any ministerial error allegations.

[3] *See generally* Memorandum to Susan Kuhbach, Director, Office 1, AD/CVD Operations, from Nancy Decker, Program Manager, Office 1, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the People's Republic of China: Ministerial Errors for Final Determination" (December 28, 2009) ("Ministerial Error Allegations Memo").

[4] *See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination,* 74 FR 47210 (September 15, 2009) ("*Preliminary Determination*").

[5] The Department instructed CBP to discontinue the suspension of liquidation on January 13, 2010, in accordance with section 703(a) of the Act. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of OCTG from the PRC made on or after January 13, 2010, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties because of the Department's discontinuation, effective January 13, 2010, of the suspension of liquidation.

instruction from the Department, countervailing duties on all unliquidated entries of OCTG from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register**.

Cash Deposit Requirements

Effective on the date of publication of the ITC's notice of final determination in the **Federal Register,** CBP will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the net subsidy rates listed below. *See* section 706(a)(3) of the Act. The all-others rate applies to all producers and exporters of subject merchandise not specifically listed.

Exporter/manufacturer	Net subsidy rate (percent)
Jiangsu Changbao Steel Tube Co. and Jiangsu Changbao Precision Steel Tube Co., Ltd.	12.46
Tianjin Pipe (Group) Co., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd.	10.49
Wuxi Seamless Pipe Co, Ltd., Jiangsu Fanli Steel Pipe Co, Ltd., Tuoketuo County Mengfeng Special Steel Co., Ltd.	14.95
Zhejiang Jianli Enterprise Co., Ltd., Zhejiang Jianli Steel Steel Tube Co., Ltd., Zhuji Jiansheng Machinery Co., Ltd., and Zhejiang Jianli Industry Group Co., Ltd.	15.78
All Others	13.41

Termination of the Suspension of Liquidation

The Department will also instruct CBP to terminate the suspension of liquidation for entries of OCTG from the PRC entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination. The Department will also instruct CBP to refund any cash deposits made and release any bonds posted between September 15, 2009 (*i.e.*, the date of publication of the Department's *Preliminary Determination*) and the date of publication of the ITC's final determination in the **Federal Register.**

This notice constitutes the countervailing duty order with respect to OCTG from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: January 15, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–1056 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT88

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will hold a joint meeting of subcommittees from a number of its advisory bodies, as follows: Enforcement Consultants, Groundfish Advisory Subpanel, Groundfish Management Team, and the Ad Hoc Trawl Individual Quota Committee. The meeting is open to the public.

DATES: The joint subcommittee meeting will be held Thursday, February 4, 2010, from 8 a.m. until business for the day is completed and Friday, February 5, 2010 from 8 a.m. until no later than 3 p.m.

ADDRESSES: The joint subcommittee meeting will be held at the Watertown Hotel, 4242 Roosevelt Way NE, Seattle WA 98105; telephone: (206) 826–4242.

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 joint subcommittee meeting is to orient members representing the various advisory panels, and Pacific Council members who will be in attendance, on the organization and content of a preliminary draft of the Amendment 20 (Trawl Rationalization) regulations. This orientation will facilitate Pacific Council review of the draft regulations at the March 2010 Pacific Council meeting. Participants may also provide drafters of the regulations with some initial reactions which the drafters may take into account as they complete the draft package for Pacific Council review.

Although non-emergency issues not contained in the meeting agenda may come before the joint subcommittee for discussion, those issues may not be the subject of formal joint subcommittee action during this meeting. Joint subcommittee 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(a) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the joint subcommittee'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: January 14, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–953 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT89

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 (Council) Highly

Migratory Species Management Team (HMSMT) will hold a work session, which is open to the public.

DATES: The HMSMT work session will start on Tuesday, February 23, 2010, and finish on Thursday, February 25, 2010. The meetings will start each day at 8:30 a.m. and continue to the finish of business each day.

ADDRESSES: The work sessions will be held in the Green Room at the La Jolla Shores Building, National Marine Fisheries Service Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037; telephone: (858) 334–2800.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: At their work session the HMSMT will discuss: Development of an amendment to the Fishery Management Plan for West Coast Fisheries for Highly Migratory Species to address new guidelines for National Standard 1 in the Magnuson-Stevens Conservation and Management Act, as amended; management options for limiting effort in the west coast albacore troll/baitboat fishery; and preparation of the HMS Stock Assessment and Fishery Evaluation (SAFE) report. The HMSMT will also hear reports on an electronic logbook feasibility study and current west coast Marine Recreational Information Program funded projects.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 14, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–954 Filed 1–19–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement; Middle East Public Health Mission, June 5–10, 2010

AGENCY: International Trade Commission, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS), is organizing a Public Health Trade Mission to Riyadh and Jeddah, Saudi Arabia and Doha, Qatar, from June 5–10, 2010. Led by a senior Department of Commerce official, the mission will focus on two important public health issues: (1) Patient healthcare and (2) water and waste management. The mission will provide an excellent venue for U.S. companies to promote equipment, services, and technologies in a range of public health sectors, including hospital and clinical laboratory equipment; pharmaceuticals; health care technologies; public health education; hospital construction and design; IT software; and waste management including medical waste; incinerators, bio-mass technology, recycling and integrated solid waste management services, water and sewage treatment plants; water desalinization and water distribution.

Commercial Setting

Saudi Arabia and Qatar offer solid business opportunities in this region for the public health sectors. Increasing populations and rapid urbanization in recent years are creating strong demand for healthcare and water and waste management. Authorities are constantly at work meeting growing demands for basic public health concerns.

Both countries are upgrading and expanding hospitals and increasing the focus on healthcare for the population. Public and private sector healthcare systems are seeking a wide range of new equipment, technologies, and solutions. Concurrently, water resources are in critical demand in a region where water tables are decreasing, creating need for more effective water treatment and management. Waste management, from sewage to medical waste, is also a concern as the countries are looking for solutions.

Saudi Arabia and Qatar rely heavily on imports in these key public health sectors. U.S equipment, technology, and know how enjoy an excellent reputation here. Business is done on the basis of contacts and U.S. exporters will need to travel to the region to develop strong working relationships with locally based agents or distributors.

Saudi Arabia

The Saudi economy is growing rapidly. Since 2002, Saudi Arabia has enjoyed budget surpluses every year and the country carried large cash reserves of $452 billion in 2009. Saudi Arabia is the largest free market economy in the region with a nominal GDP expected at $460 billion in 2009.

Medical Equipment and Healthcare Sector

Between now and 2016, the population of Saudi Arabia is expected to grow by more than 20%, from 23 million to 30 million, which, in turn, will create an unprecedented demand for healthcare services. Saudi Arabia remains the Gulf region's largest and most developed market for medical products and services, valued at $13.1 billion. The introduction of compulsory healthcare insurance, the gradually aging population, and greater material wealth along with an upsurge in lifestyle diseases all combine to boost demand for healthcare services.

From 2009 to 2016 health expenditures are expected to increase dramatically, even faster than the 20% rate of population growth. Over the same period, demand for hospital beds is likely to grow from 51,000 to 70,000, demand for physicians is likely to rise from 40,000 to 54,000 and the number of hospitals is likely to rise from 364 to 502. The government allocated $13.9 billion for the healthcare sector in the 2009 budget, 17% more than in 2008. The funds were used to finance 86 new hospitals with 11,750 beds and additional Primary Healthcare Centers (PHC). Government spending on the healthcare sector is expected to grow to over $20 billion by 2016 annually.

Water Resources

Saudi Arabia is the third largest consumer of water per capita in the world, but has limited groundwater to tap. The country has been plagued by shortages in recent years, and with consumption from a rising population and economic growth set to soar. Desalination forms the backbone of the government's water strategy. Some 30 desalination plants have already been

built by the state, but these have barely been able to keep pace with rising demand. Building on a master plan drawn up in 2002, the government has committed $6 billion a year to bolster the water sector over the next two decades.

Saudi Arabia's leaky water supply and wastewater pipeline network is also receiving massive investment, mainly through public private partnerships (PPPs). Wastewater treatment management is also being opened up to the private sector in a separate program. Mindful of the expense involved in all this and the need to conserve water, the Saudi Government is working on a number of large projects, primarily in the water and sewage sectors, in an attempt to meet the needs posed by rising population and industrial growth.

Solid Waste Management

Saudi Arabia's rapid industrialization, construction, and urbanization have increased levels of pollution and waste. The Saudi government recognizes the critical demand for waste management solutions, and is investing heavily in solving this problem. The 2008 national budget allocates: (1) $4.5 billion for the municipal services sector, which includes water drainage and waste disposal; and, (2) $7.6 billion for the water, agriculture and infrastructure sector, which includes sanitation services and desalination plants.

The Kingdom's five-year plan for infrastructure and public sector building that ended last year was valued at over $53 billion. Six mega cities are under construction, and hundreds of thousands of housing units are to be constructed. All projects will produce waste requiring the latest in recycling and waste management. Yet, this multi-billion dollar sector continues to be under-developed, and holds substantial business opportunities for American companies.

Qatar

Qatar's economy is growing at an extraordinary rate, presenting U.S. firms with excellent export opportunities. Qatar's robust GDP growth, among the fastest in the world, is mainly attributed to ongoing increases in production and exports of liquefied natural gas (LNG), oil, and petrochemicals products.

Commercial ties between the United States and Qatar have expanded at a rapid pace. Between 2003 and 2008, trade volumes grew by more than 340%, from $738 million to $3.2 billion. Over the same period, U.S. exports increased 580 percent to $2.7 billion, making the United States the largest import partner for Qatar. In 2008, Qatar was the United States' fifth largest export market in the Middle East.

Medical Equipment and Healthcare Sector

Health care is a priority concern for the Qatari leadership. The country is investing billions in developing modern medical facilities to cope with rapid population growth. According to the latest data, Qatar has nine hospitals and 23 health centers. In Qatar, healthcare services are either free or highly subsidized. According to the latest industry data available, government health expenditures account for 14.9 percent of total government expenditures.

Currently, three public hospitals are being built at the $1 billion Hamad Medical City, which in total will provide 1,100 additional beds. The facilities will provide pediatric, trauma and orthopedic care, as well as a nursing home for the elderly and a renal dialysis unit. A 300-bed community hospital is also under construction in Al-Wakrah. The largest healthcare project under way in Qatar is the $2.4 billion Sidra Medical & Research Center at Education City. Due to open in 2012 with infrastructure to house 550 beds, Sidra has been designed as a "five-star" hospital with the long-term vision to become a referral center for patients from across the region. These new facilities will significantly expand Qatar's healthcare system within the next few years.

Water Resources

Over the past decade, Qatar has had one of the fastest growth rates in water usage in the Gulf, at around 16 percent annually. Qatar consumes over 219 million gallons of water per day, 99% of which comes from desalination plants. Qatar's desalination capacity will total 324 million gallons per day in 2010, but water consumption is expected to reach 380 million gallons per day by 2013. As population and industrial growth push needs to high levels, the nation's water authorities are contending with some of the highest per capita water consumption rates in the world.

The Qatar Electricity and Water Company (QEWC) committed $7.5 billion in January 2009 to increase power capacity and to raise water capacity to more than 300 million gallons per day. QEWC is set to implement the largest power generation and water desalination project in Qatar. The project is estimated to cost around $3.85 billion and will have a capacity of 63 million gallons of water per day. In addition, plans are being drawn up for a new 30–50 million gallons per day desalination plant to plug an anticipated water shortfall by 2011–13. Preliminary studies are also being made to determine the best location for further water desalination plants.

Solid Waste Management

Qatar has emerged as a fast developing country with growing environmental problems associated with rapid urbanization and population influx. There is an urgent demand for basic infrastructure to support economic growth, especially for waste management. The annual per capita waste generation rate in Qatar is about 430 kilograms per person, which is relatively high among industrialized country standards.

In addition to its own population growth, the number of travelers to the country is increasing. For example, business travel to the country is expected to grow by 20% over the next five years. Thirteen million passengers pass though the current air terminal each year, while the new airport expects to see 24 million passengers a year. This influx of tourist place even more strains on Qatar's existing capacity to handle solid waste.

Mission Goals

The objective of this trade mission is to introduce U.S. companies to distributors, public and private buying agents and other potential business partners. The mission will focus on identifying opportunities for sales for patient healthcare and water and waste management. The mission will additionally seek to acquaint U.S. companies with the local market environments for public health equipment so as to facilitate their ability to effectively introduce their products to the region.

Mission Scenario

Participants will visit three of the region's key metropolitan centers. The mission will have access to major countrywide markets, as well as central government officials and U.S. Embassy staff for regulatory and business climate briefings.

Riyadh—the capital of Saudi Arabia. Government Ministries and many decisionmakers are based here.

Jeddah—the business capital of Saudi Arabia offers extensive opportunities in the public healthcare sector.

Doha—the capital of Qatar, a Gulf Emirate, offers business-friendly commercial procedures and political stability.

During the trade mission participants will receive: (A) Briefings on public health markets in each city visited;

(B) introductions to potential agents/distributors, facility administrators, and purchasing managers through group events; (C) site visits if applicable; (D) one-on-one meetings tailored to each firm's interests; and (E) meetings with local business representatives and government officials, as appropriate.

Proposed Mission Timetable

Day of week	Date	Activity
Friday	June 4; Riyadh	Arrive in Riyadh, Saudi Arabia; *Informal dinner and greeting by U.S. Commercial Service staff.*
Saturday	June 5; Riyadh	Mission meetings officially start; Breakfast briefing from Riyadh Embassy staff; Group meeting with local U.S. business executives; One-on-one business appointments; Evening business reception.
Sunday	June 6; Riyadh	One-on-one business appointments in Riyadh; Possible site visit—choice of hospital or waste/water treatment facility.
Monday	June 7; Riyadh/Jeddah	Travel to Jeddah as a group in the morning; One-on-one business appointments in Jeddah; Possible site visit; Possible Evening business reception or informal dinner.
Tuesday	June 8; Jeddah/Doha	One-on-one business meetings; Travel to Doha, Qatar as a group in the late afternoon; Informal dinner in Doha.
Wednesday	June 9; Doha	Commercial briefings from Embassy staff; One-on-one business appointments; Group meeting with local U.S. business executives; Evening business reception.
Thursday	June 10; Doha	One-on-one business meetings; Round table discussion with U.S. companies in Qatar; Possible site visit in afternoon visit—choice of hospital or waste/water; treatment facility.

Note: The final schedule and potential site visits will depend on the availability of local government and business officials, specific goals of mission participants, and air travel schedules.

Participation Requirements

All persons interested in participating in the Public Health Trade Mission to Saudi Arabia and Qatar must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and a maximum of 25 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in the Middle East as well as U.S. companies seeking to enter the region for the first time are encouraged to apply.

Fees and Expenses

After a company or trade organization has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4,590 for large firms and $3,550 for a small or medium-sized enterprise (SME) [1] or small organization, which will cover one representative.[2] The fee for each additional firm representative (large firm or SME) is $600. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services to the Saudi and Qatar markets.
- Applicant's potential for business in Saudi and Qatar, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission (as an example—be in the public health sectors indicated in the mission description).

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register,** posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS Saudi Arabia and CS Qatar will work in conjunction with Global Trade Programs, which will serve as a key facilitator in establishing strong commercial ties to the U.S. companies in the targeted sectors nationwide.

Recruitment for the mission will begin immediately and conclude no later than Wednesday, March 31, 2010. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after March 31, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Contacts

Ms. Jeanne Townsend, Baltimore U.S. Export Assistance Center, *Tel:* 410–962–4518, *Fax:* 410–962–4529, *E-mail: jtownsen@mail.doc.gov,*

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*).

[2] Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Ms. Lisa C. Huot, U.S. Department of Commerce, Washington, DC 20230, *Tel:* 202–482–2796, *Fax:* 202–482–0115, *E-Mail: Lisa_Huot@ita.doc.gov.*

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–928 Filed 1–19–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Mission Statement: U.S. Aerospace Business Development Mission to Canada, April 14–15, 2010

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce's International Trade Administration, U.S. and Foreign Commercial Service is organizing a U.S. Aerospace Business Development Mission to Montreal, Canada, April 14–15, 2010. This aerospace mission is designed to provide U.S. aerospace export-ready, small to medium-sized companies (SMEs) with a highly efficient and cost-effective opportunity to establish profitable commercial relations with prospective agents, distributors and end-users in Canada's aerospace market. Participating U.S. companies will receive market intelligence briefings by Canadian industry experts, networking opportunities and most importantly, pre-scheduled, pre-screened one-on-one meetings with Canadian aerospace company representatives. Mission participants will also benefit from visiting key local aerospace original equipment manufacturers (OEM) and speaking with procurement managers about supply chain opportunities. This mission is an ideal opportunity for U.S. aerospace companies to gain valuable international business experience in a low risk, highly important aerospace market.

Commercial Setting

Canada is a very receptive market to U.S. goods and services and presents an ideal opportunity for the U.S. Commercial Service, both in the United States and Canada, to broaden and deepen the U.S. exporter base and help U.S. SMEs achieve export success. The United States and Canada share the largest and most dynamic commercial relationship in the world. In 2008, two-way merchandise trade crossing our common border with Canada stood at US$596.9 billion, or more than US$1.6 billion per day as U.S. exports to Canada grew by 5.0 percent. Today, U.S. trade with Canada exceeds total U.S. trade with the 27 countries of the European Union combined. Canada also represents the number one export market for 36 of our 50 States and is among the top five export markets for another ten States. The aerospace industry has been identified as one of Canada's best prospects.

In 2008, Canada was the fourth largest export market for U.S. aerospace products, generating close to US$7.5 billion in U.S. export sales. Canada's aerospace industry is the fifth largest in the world; in 2008 total aerospace sales were US$22.6 billion. Industry estimates show that the aerospace industry will experience nearly flat growth next year, and will begin to pick up more rapidly in 2011. Canada is a world leader in the global aerospace industry and a market leader in regional aircraft, commercial helicopters, turbine engines, flight simulators and a broad range of aircraft systems, components and equipment. Quebec is at the heart of the Canadian Aerospace Industry. Over 60 percent of all Canadian aerospace production and approximately 70 percent of Canadian aerospace research and development is performed within a 30-mile radius of Montreal. Quebec's aerospace industry alone is the sixth largest in the world.

Montreal is home to renowned industry leaders such as Bombardier Aerospace, Bell Helicopter Textron, Pratt & Whitney Canada, and CAE. To this exceptional concentration of world leaders, we can add other big names such as Rolls-Royce Canada, Héroux Devtek, Messier-Dowty, CMC Electronics—Esterline, Thales, and many other suppliers, mostly SMEs, which form a cluster of over 250 aerospace firms.

Canada's geographic proximity, open market economy, stable business climate and receptivity to U.S. goods and services make it the number one gateway to the international marketplace for thousands of U.S. export-ready SMEs. The North American Free Trade Agreement (NAFTA), which provides U.S. NAFTA qualifying products with duty-free entry into Canada, also contributes to the relatively low-cost, low-risk, access that U.S. SMEs can use to prosper and grow in the Canadian marketplace.

Mission Goals

The trade mission's goal is to introduce U.S. suppliers of aerospace products to Canadian potential end-users and partners, including potential agents, distributors, and licensees, with the aim of creating business partnerships that will contribute to increasing U.S. exports to the Canadian aerospace market, particularly the aircraft and aircraft parts market.

Mission Scenario

Participants in the mission to Canada will benefit from a full range of business facilitation and trade promotion services provided by the U.S. Commercial Service in Canada. Participants will receive a briefing by a panel of experts on the Canadian aerospace market, as well as an overview of the country's economic and political environment. The mission will also include one-on-one business meetings between U.S. participants and potential Canadian end-users and partners, networking opportunities, and tours of some of the largest original aerospace manufacturers, where companies will have the opportunity to meet senior OEM representatives and learn about planned projects and expected procurement needs. Prior to the end of the mission, Commercial Service staff will counsel participants on follow-up.

CS Canada will work with the following Canadian Aerospace Industry multipliers to help provide access mission participants: Quebec Ministry of Economic Development, Export and Innovation, Industry Canada, the Canadian Department of Foreign Affairs and International Trade and the Quebec Aerospace Association.

Proposed Mission Timetable

The proposed schedule allows for about two full days in Montreal.

Tuesday, April 13, 2009	Mission members arrive in Montreal; Welcome Dinner.
Wednesday, April 14, 2009	Market briefing; Business matchmaking; Networking event.
Thursday, April 15, 2009	Visits to Canadian aerospace OEMs and opportunity to meet with procurement managers; Debriefing; Departure from Montreal.

Participation Requirements

All parties interested in participating in the U.S. Aerospace Business Development Mission to Canada must complete and submit an application form for consideration by the Department of Commerce. All applicants will be evaluated on their ability to satisfy the selection criteria as outlined below. A minimum of 10 and maximum of 15 companies will be selected on a first come-first served basis.

Fees and Expenses

After a company has been selected to participate on the mission, a participation fee paid to the U.S. Department of Commerce is required. The participation fee will be $2,900 for large firms and $2,000 for a small or medium-sized enterprise (SME),[1] for up to two company representatives. The fee for more than two company representatives is $250 per additional participant. Expenses for travel, lodging, in-country transportation (except for bus transportation to visit local aerospace OEMs on the second day of the mission), meals and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission Participation Agreement and a completed Market Interest Questionnaire, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services to be promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of the company's products or services for the Canadian aerospace market.
- Applicant's potential for business in Canada, including the likelihood of exports resulting from the mission.
- Consistency in the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner. Outreach will include publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

The mission will be open on a first-come, first-served basis. Recruitment for the mission will begin immediately and close on February 12, 2010. Applications received after February 12, 2010, will be considered only if space and scheduling constraints permit. Applications will be available online on the mission Web site at: *http://www.buyusa.gov/Canada.*

Contacts

Gina Bento, Commercial Specialist, U.S. Commercial Service, P.O. Box 65 Desjardins Station, Montreal, QC H5B 1G1. *Tel:* 514–908–3660. *E-mail: Gina.Bento@mail.doc.gov.*

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–929 Filed 1–19–10; 8:45 am]

BILLING CODE P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 January 2010, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated January 11, 2010 in Washington, DC.

Thomas Luebke, AIA,

Secretary.

[FR Doc. 2010–874 Filed 1–19–10; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 20, 2010, 2 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Weekly/Monthly Report—Commission Briefing.

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: January 12, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–883 Filed 1–19–10; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committee; Defense Business Board

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

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 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Defense Business Board (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board is a discretionary federal advisory committee established to examine and advise on overall management and governance of the Department of Defense.

The Board shall provide the Secretary of Defense and the Deputy Secretary of Defense independent advice and recommendations on effective strategies for the implementation of best business practices on matters of interest to the Department of Defense.

The Board's membership shall not exceed twenty five. Members should have a proven track record of sound judgment in leading or governing large, complex private sector corporations or entities and a wealth of top-level, global business experience in the areas of executive management, corporate governance, audit and finance, human resources and compensation, economics, technology and healthcare.

The Board members, to include the Board's chairperson, shall be appointed by the Secretary of Defense, and their appointments will be renewed on an annual basis. Those members, who are not full-time or permanent part-time federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees. With the exception of travel and per diem for official travel, Board members shall serve without compensation.

The Chairperson of the Defense Policy Board and the Defense Science Board shall serve as non-voting ex-officio members of the Board.

The Director of the Office of Management and Budget and the Comptroller General of the General Accounting Office shall serve as non-voting observers of the Board.

The Secretary of Defense may invite other distinguished U.S. Government officers to serve as non-voting observers of the board, and appoint consultants, with special expertise, to assist the Board on an ad hoc basis. In addition, the Secretary of Defense may appoint experts and consultants, with special expertise, to assist the Board on an ad hoc basic. These experts and consultants, appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees; however, they shall have no voting rights on the Board.

Non-voting ex-officio members, non-voting observers and those non-voting experts and consultants appointed by the Secretary of Defense shall not count toward the Board's total membership.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Task Force members, shall be appointed in the same manner as the Task Force members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Business Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Defense Business Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Business Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Business Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Business Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: January 13, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–855 Filed 1–19–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 22, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 14, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Revision.

Title: Generic Clearance for ED's Outreach Contests.

Frequency: One time.

Affected Public: Businesses or other for-profit; Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 3,000.

Burden Hours: 18,000.

Abstract: The Department is requesting OMB approval for a generic clearance for ED's outreach contests. ED's Office of Communications and Outreach plans to host approximately four outreach contests each year as part of an ongoing effort to reach out to the general public on priority issues in the Department's national education agenda. Each contest will aim to capture and promote improving public education from works (i.e. videos, essays, etc.) made by individuals in a specific sub-group (i.e. teachers, principals, etc.) or from the general public. The individual contests will be submitted under this generic clearance for approval as they occur throughout the year.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4201. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–968 Filed 1–19–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; College Assistance Migrant Program (CAMP)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.149A.

ACTION: Correction; Notice inviting applications for new awards for fiscal year (FY) 2010.

SUMMARY: On December 15, 2009, we published in the **Federal Register** (74 FR 66300) a notice inviting applications for new awards for FY 2010. The notice specified a deadline date of February 16, 2010 for the submission of applications. Since publication, however, we have learned that the Department's e-Application system will be shut down for a system update from February 10, 2010 through February 15, 2010. Therefore, in order to give applicants adequate time to upload their application packages, we are changing the deadline for the submission of applications to February 19, 2010. With this change in the deadline date, we are also changing the deadline date for intergovernmental review. The specific changes to be made are as follow:

On page 66300, third column, the date listed for *Deadline for Transmittal of Applications* is changed to read "February 19, 2010."

On page 66300, third column, the date listed for *Deadline for Intergovernmental Review* is changed to read "April 19, 2010."

On page 66301, third column, the date listed for *Deadline for Transmittal of Applications* is changed to read "February 19, 2010."

On page 66301, third column, the date listed for *Deadline for Intergovernmental Review* is changed to read "April 19, 2010."

FOR FURTHER INFORMATION CONTACT: David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., Room 3E344, Washington, DC 20202–6135. *Telephone:* (202) 260–8103, or by *e-mail: david.de.soto@ed.gov,* or Tara Ramsey, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E323, Washington, DC 20202–6135. *Telephone:* (202) 260–2063, or by *e-mail: tara.ramsey@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.

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** in this notice.

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

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.n.*

Dated: January 14, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–961 Filed 1–19–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grant Competition for the Cooperative Civic Education and Economic Education Exchange Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.304A.

Dates:

Applications Available: January 20, 2010.

Deadline for Transmittal of Applications: March 8, 2010.

Deadline for Intergovernmental Review: May 5, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Cooperative Civic Education and Economic Education Exchange Program provides grants to improve the quality of civic education and economic education through cooperative civic and economic education exchange programs with emerging democracies.

Note: This competition invites applications that address civic education or economic education. We estimate that one award will be made to an application addressing the absolute priority for civic education and one award will be made to an application that addresses the absolute priority for economic education.

Priorities: This competition includes two absolute priorities and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities are from section 2345(c) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6715(c)).

Absolute Priorities: For FY 2010, there are two absolute priorities, one for civic education, and one for economic education. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities.

These priorities are:

Absolute Priority 1—Civic Education

Each applicant that proposes a project to carry out a cooperative civic education exchange program must propose to carry out each of the following activities:

(1) Provide to the participants from eligible countries—

(A) Seminars on the basic principles of United States constitutional democracy, including seminars on the major governmental institutions and systems in the United States, and visits to such institutions;

(B) Visits to school systems, institutions of higher education, and nonprofit organizations conducting exemplary programs in civics and government education, in the United States;

(C) Translations and adaptations with respect to United States civics and government education, curricular programs for students and teachers, and in the case of training programs for teachers, translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas; and

(D) Independent research and evaluation assistance to determine the effects of the cooperative civic education exchange programs on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy.

(2) Provide to the participants from the United States—

(A) Seminars on the histories and systems of government of eligible countries;

(B) Visits to school systems, institutions of higher education, and organizations conducting exemplary programs in civics and government education, located in eligible countries;

(C) Assistance from educators and scholars in eligible countries in the development of curricular materials on the history and government of such countries that are useful in United States classrooms;

(D) Opportunities to provide onsite demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(E) Independent research and evaluation assistance to determine the effects of the cooperative civic education exchange programs assisted through this grant on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy.

(F) Assist participants from eligible countries and the United States to participate in international conferences on civics and government education for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers.

Absolute Priority 2—Economic Education

Each applicant that proposes to carry out a cooperative economic exchange program must propose to carry out each of the following activities:

(1) Provide to the participants from eligible countries—

(A) Seminars on the basic principles of the economic system in the United States, including seminars on the economic institutions in the United States, and visits to such institutions;

(B) Visits to school systems, institutions of higher education, and nonprofit organizations conducting exemplary programs in economic education, in the United States;

(C) Translations and adaptations with respect to United States economic education, curricular programs for students and teachers, and in the case of training programs for teachers, translations and adaptations into forms useful in schools in eligible countries, and joint research projects in such areas; and

(D) Independent research and evaluation assistance to determine the effects of the cooperative economic education exchange programs on students' ability to identify effective participation in, and the preservation and improvement of an efficient market economy.

(2) Provide to the participants from the United States—

(A) Seminars on the economies of eligible countries;

(B) Visits to school systems, institutions of higher education, and organizations conducting exemplary programs in economic education located in eligible countries;

(C) Assistance from educators and scholars in eligible countries in the development of curricular materials on the economy of such countries that are useful in United States classrooms;

(D) Opportunities to provide onsite demonstrations of United States curricula and pedagogy for educational leaders in eligible countries; and

(E) Independent research and evaluation assistance to determine the effects of the cooperative economic education exchange programs assisted through this grant on students' ability to identify effective participation in, and the preservation and improvement of an efficient market economy.

(F) Assist participants from eligible countries and the United States to participate in international conferences on economic education for educational leaders, teacher trainers, scholars in related disciplines, and educational policymakers.

Within the absolute priorities, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Performance Data

We are particularly interested in projects that use pre- and post-intervention testing, or more rigorous methods, to measure the effects of the Cooperative Civic Education and Economic Education Exchange Program on the knowledge and skills of students and the classroom practice(s) of participating teachers.

Program Authority: 20 U.S.C. 6711–6716.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: $2,682,787.
Estimated Range of Awards: $700,000–$1,982,787.
Estimated Average Size of Awards: $1,341,393.
Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Organizations in the United States experienced in the development of curricula and programs in civics and government education, or economic education for students in elementary schools and secondary schools in countries other than the United States.

2. *Eligible Country:* For the purpose of this grant competition, the term *eligible country* means a Central European country, an Eastern European country, Lithuania, Latvia, Estonia, the independent states of the former Soviet Union as defined in section 3 of the FREEDOM Support Act (22 U.S.C. 5801), the Republic of Ireland, the province of Northern Ireland in the United Kingdom, and any developing country (as such term is defined in section 209(d) of the Education for the Deaf Act (20 U.S.C. 4359a(d)) if the Secretary, with the concurrence of the Secretary of State, determines that such developing country has a democratic form of government. (*See* 20 U.S.C. 6715(g)).

A list of the countries is included in the application package.

3. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

4. *Other:* Primary participants in the cooperative education exchange programs assisted through this grant shall be educational leaders in the areas of civic and government education, and economic education, including teachers, curriculum and teacher training specialists, scholars in relevant disciplines, educational policymakers, and government and private sector leaders from the United States and eligible countries. (*See* 20 U.S.C. 6715(d)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Rita Foy Moss, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Room 10006, Washington, DC 20202. *Telephone:* (202) 245–7866 or by *e-mail: rita.foy.moss@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for the Cooperative Civic Education and Economic Education Exchange Program competition.

Page Limit: The application narrative (Part III of the application is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to no more than 25 pages, using the following standards:

1. A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

2. Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

3. Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

4. Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: January 20, 2010.

Deadline for Transmittal of Applications: March 8, 2010. Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants System, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: May 5, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by

4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date.

Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the program contact listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.304A) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Application by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center *Attention:* (CFDA Number 84.304A) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 in EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measure:* If funded, applicants will be expected, consistent with one of the statutory purposes of this program (*see* 20 U.S.C. 6715(b)(5)(A)), to provide information on the results of any independent research and evaluation assistance supported to determine the effects of the Cooperative Civic Education and Economic Education Exchange Program on students' development of the knowledge, skills, and traits of character essential for the preservation and improvement of constitutional democracy and market economies. In addition, funded applicants responding to the Invitational Priority are encouraged to collect and submit data on the effects of the program on the knowledge and skills of students, and the classroom practice(s) of participating teachers.

VII. Agency Contact

For Further Information Contact: Rita Foy Moss, U.S. Department of Education, 400 Maryland Avenue, SW., PCP, room 10006, Washington, DC 20202. *Telephone:* (202) 245–7866, *FAX:* (202) 485–0013 or by *e-mail: rita.foy.moss@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

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

Dated: January 14, 2010.

Kevin Jennings,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 2010–965 Filed 1–19–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; High School Equivalency Program (HEP)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.141A.

ACTION: Correction; Notice inviting applications for new awards for fiscal year (FY) 2010.

SUMMARY: On December 15, 2009, we published in the **Federal Register** (74 FR 66304) a notice inviting applications for FY 2010. The notice specified a deadline date of February 16, 2010 for the submission of applications. Since publication, however, we have learned that the Department's e-Application system will be shut down for a system update from February 10, 2010 through February 15, 2010. Therefore, in order to give applicants adequate time to upload their application packages, we are changing the deadline for the submission of applications to February 19, 2010. With this change in the deadline date, we are also changing the deadline date for intergovernmental review. The specific changes to be made are as follow:

On page 66304, first column, the date listed for *Deadline for Transmittal of Applications* is changed to read "February 19, 2010."

On page 66304, first column, the date listed for *Deadline for Intergovernmental Review* is changed to read "April 19, 2010."

On page 66305, second column, the date listed for *Deadline for Transmittal of Applications* is changed to read "February 19, 2010."

On page 66305, second column, the date listed for *Deadline for Intergovernmental Review* is changed to read "April 19, 2010."

FOR FURTHER INFORMATION CONTACT: David De Soto, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E344, Washington, DC 20202–6135. *Telephone:* (202) 260–8103, or by *e-mail: david.de.soto@ed.gov,* or Tara Ramsey, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E323, Washington, DC 20202–6135. *Telephone:* (202) 260–2063, or by *e-mail: tara.ramsey@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.

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** in this notice.

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

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

Dated: January 14, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–996 Filed 1–19–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE AND TIME: Monday, January 25, 2010, 1 p.m.–3 p.m. EDT.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 150, Washington, DC 20005 (Metro Stop: Metro Center).

AGENDA: The Commission will hold a public meeting to consider administrative matters. The Commission will receive an update regarding the Memorandum of Understanding (MOU) with the Organization of American States (OAS). The Commission will receive an update on Maintenance of Effort. Per the tally vote policy of the Commission, two items have been placed on the agenda for consideration: the Commission will consider Advisory Opinion Request 09–016 and the Commission will consider the Annual Grants Report.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

This meeting and hearing will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Gineen Bresso Beach,

Chair, U.S. Election Assistance Commission.

[FR Doc. 2010–1058 Filed 1–15–10; 4:15 pm]

BILLING CODE 6820–KF–P

* View EAC Regulations Implementing Government in the Sunshine Act.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11392–009]

J&T Hydro Company; H. Dean Brooks and W. Bruce Cox; Notice of Application for Transfer of License and Soliciting Comments and Motions To Intervene

January 12, 2010.

On October 30, 2009, J&T Hydro Company (transferor) and W. Dean Brooks, and H. Bruce Cox (transferees) filed an application for transfer of license of the Ramseur Project No. 11392 located on the Deep River in Randolph County, North Carolina.

The transferor and transferees seek Commission approval to transfer the license for the Ramseur Project from the transferor to the transferee.

Applicant Contacts: For transferor and transferee: Mark K. Seifert, 107 Saint Brides Court, Cary, NC 27518, (919) 362–4452.

FERC Contact: Steven Sachs, (202) 502–8666 or *Steven.Sachs@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii)(2009) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the eLibrary link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–11392) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–911 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13123–002]

Eagle Crest Energy Company; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 11, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 13123–002.

c. *Date filed:* June 23, 2009.

d. *Applicant:* Eagle Crest Energy Company.

e. *Name of Project:* Eagle Mountain Pumped Storage Project.

f. *Location:* The Project would be located in two depleted mining pits in the Eagle Mountain Mine in Riverside County, California, near the Town of Desert Center, California, and would occupy federal lands administered by the U.S. Bureau of Land Management and private lands owned by Kaiser Eagle Mountain, LLC.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Stephen Lowe, One El Paseo West Building, 74–199 El Paseo Drive, Suite 204, Palm Desert, CA 92260, (760) 346–4900.

i. *FERC Contact:* Kim A. Nguyen, 888 First Street, NE., Room 61–01, Washington, DC 20426, (202) 502–6105, *kim.nguyen@ferc.gov*.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The project would consist of: (1) A 191-acre upper reservoir impounded by two diversion dams with a total storage capacity of 20,000 acre-feet; (2) a 163-acre lower reservoir with a total storage

capacity of 21,900 acre-feet; (3) an upper reservoir spillway channel about 4,000 feet long; (4) a 14,000-foot-long section of Eagle Creek; (5) an upper reservoir intake structure; (6) 29-foot-diameter by 4,000-foot-long low pressure upper tunnel; (7) a surge tank with a 33-foot-diameter by 1,348-foot-long tunnel shaft; (8) a 29-foot-diameter by 1,560-foot-long high pressure lower tunnel; (9) a 33-foot-diameter by 6,835-foot-long tailrace tunnel; (10) a 72-foot-wide, 130-foot-high, and 360-foot-long underground powerhouse; (11) four reversible pump-turbine units at 325 megawatts each, for a total installed capacity of 1,300 megawatts; (12) a 28-foot-wide, 28-foot-high, by 6,625-foot-long access tunnel to the underground powerhouse; (13) a lower reservoir inlet structure; (14) a site near the switchyard for the reverse osmosis system; (15) a desalination area; (16) a buried water supply pipeline ranging from 12- to 24-inch-diameter totaling 15.3 miles; (17) a 13.5-mile-long, 500-kilovolt transmission line connecting to a new Interconnection Collector Substation; (18) many miles of permanent construction and access roads; (19) staging, storage, and administration areas near the switchyard; and (20) appurtenant facilities. The average annual generation is estimated to be 22.2 gigawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–913 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12496–001]

Rugraw, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 11, 2010.

On December 17, 2009, Rugraw, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Lassen Lodge Hydroelectric Project, which would be comprised of a single, 5.1 megawatt development on the South Fork Battle Creek. The proposed project would be located in Tehama County, California, near the unincorporated town of Mineral.

The proposed project would consist of the following facilities:

(1) An 80-feet-long, 5-feet-high diversion structure incorporating the existing natural features (large boulders, *etc.*) and grout; (2) a new reservoir with a proposed surface area of approximately 0.5 acre, with a storage capacity of approximately 2.5 acres, and with a normal water surface elevation of 4,315 feet mean sea level; (3) a 7,900-feet-long, 42-inch-diameter low pressure pipeline attached to an approximately 6,100-feet-long high pressure penstock; (4) a powerhouse containing a horizontal Pelton-type turbine/generator unit with an installed capacity of 5.1 megawatts; (5) a tailrace; (6) a proposed 60 KV-transmission line approximately 10 miles long; and (7) appurtenant facilities.

The proposed project would have an average annual generation of 23.9 gigawatt-hours.

Applicant Contact: Mr. Thomas Keegan; ECORP Consulting, Inc., 2525 Warren Drive, Rocklin, California 95677; *phone:* (916) 782–9100.

FERC Contact: Kenneth Hogan, 202–502–8434 or via e-mail at: *Kenneth.Hogan@ferc.gov*.

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. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. 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 (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12496) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–914 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6885–000]

Richard Moss; Notice of Authorization for Continued Project Operation

January 12, 2010.

On January 31, 2008, Richard Moss, licensee for the Cinnamon Ranch Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Cinnamon Ranch Hydroelectric Project is located on the Middle, Birch, and Pellisier Creek near the Town of Benton, California.

The license for Project No. 6885 was issued for a period ending December 31, 2009. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 6885 is issued to Richard Moss for a period effective January 1, 2010 through December 31, 2010, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 31, 2010, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that Richard Moss is authorized to continue operation of the Cinnamon Ranch Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–909 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–539–000]

Palmco Power OH, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 8, 2010.

This is a supplemental notice in the above-referenced proceeding of Palmco Power OH, 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 January 28, 2010.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–921 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–537–000]

Palmco Power MD, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 8, 2010.

This is a supplemental notice in the above-referenced proceeding of Palmco Power MD, 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 January 28, 2010.

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 Street, 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 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. 2010–920 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–21–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mobile Bay South II Expansion Project and Request for Comments on Environmental Issues

January 11, 2010.

The Staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Mobile Bay South II Expansion Project (Project) involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LLC (Transco) in Choctaw County, Alabama. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The Notice of Intent (NOI) explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help determine which issues will be evaluated in the EA. Please note that the scoping period for this Project will close on February 12, 2010.

Comments on the Project may be submitted in written form or electronically, as described in the public participation section of this notice.

This NOI is being sent to the Commission's current environmental mailing for this project, which includes affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; parties to this proceeding; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (*http://www.ferc.gov/for-citizens/citizen-guides.asp*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in FERC's proceedings.

Summary of the Proposed Project

Transco proposes to install one additional 8,180 horsepower compressor unit and related auxiliary equipment at Compressor Station 85 located at the interconnection of the Mobile Bay Lateral and Transco's mainline in Choctaw County, Alabama, minor modifications, including installation of gas coolers, at the existing Compressor Station 83 in Mobile County, Alabama, and a new tap, valve, and associated piping to interconnect with an additional meter station to be constructed, owned, and operated by Florida Gas Transmission Company, LLC ("Florida Gas") adjacent to its existing Citronelle meter station in Mobile County, Alabama.

A location map depicting the proposed facilities is attached to this NOI as Appendix 1.[1]

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as results of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources.
- Aquatic resources Vegetation and wildlife.
- Threatened and endangered species.
- Land use, recreation, and visual resources.
- Cultural resources.
- Socioeconomics.
- Air quality and noise.
- Reliability and safety.
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on our previous experience with similar

[1] The appendices referenced in this notice are not printed in the **Federal Register**, but they are being provided to all those who receive this notice in the mail. Copies of the NOI can be obtained from the Commission's Web site at the "eLibrary" link, Commission's Public Reference Room, or by calling (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice.

projects in the region. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses specific to the Project.

- Potential noise and vibration impacts from compressor station.
- Air quality impacts from the compressor station construction and operation.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before February 12, 2010.

Comments on the proposed Project can be submitted to the FERC in written form. For your convenience, there are three methods which you can use to submit your written comments to the Commission. In all instances please reference the Project docket number (CP10–21–000) with your submission. The three methods are:

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "*Documents and Filings*". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "*Documents and Filings*" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "*Sign up*" or "*eRegister*". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file your comments with the Commission via mail by sending your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes, who have existing easements from the pipeline, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the Internet at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–915 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC Docket No. CP09–54–000]

Ruby Pipeline, L.L.C.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Ruby Pipeline Project

January 8, 2010.

The staff of the Federal Energy Regulatory Commission (Commission or FERC) has prepared a final Environmental Impact Statement (EIS) for the Ruby Pipeline Project proposed by Ruby Pipeline, L.L.C. (Ruby) in the above-referenced docket. Ruby requests authorization to construct a new pipeline in Wyoming, Utah, Nevada, and Oregon to transport up to 1.5 million dekatherms per day of natural gas from southwestern Wyoming to customers in Nevada and on the West Coast (Washington, Oregon, and northern California).

The final EIS assesses the potential environmental effects of the construction and operation of the Ruby Pipeline Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EIS and the additional measures and agreements being developed by Ruby with other agencies, would have some adverse environmental impacts; however, most impacts would be reduced to less-than-significant levels.

The following agencies participated as cooperating agencies in the preparation of the EIS:

- Bureau of Land Management (BLM);
- Bureau of Reclamation;
- U.S. Fish and Wildlife Service;
- U.S. Forest Service (USFS);
- Natural Resources Conservation Service;
- U.S. Army Corps of Engineers;
- State of Utah Public Lands Policy Coordination Office; and
- Board of County Commissioners in Lincoln County, Wyoming.

Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affect by the proposal and participate in the NEPA analysis. While the conclusions and recommendations presented in the EIS were developed with input from the cooperating agencies, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- About 675.2 miles of 42-inch-diameter mainline pipeline;
- About 2.6 miles of 42-inch-diameter lateral pipeline;
- An electric-powered compressor station and 3 natural gas-powered compressor stations (totaling 160,500 horsepower of new compression);
- 5 meter stations containing interconnects to other pipeline systems;
- 44 mainline valves;
- 20 pig launchers or receivers; and
- 4 new communication towers.

The final EIS has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov.* A limited number of copies are available for distribution and public inspection at: Federal Regulatory Energy Commission, Public Reference Room, 888 First St., NE.; Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EIS have been mailed to Federal, State, and local government agencies; elected officials; Native American tribes; local libraries and newspapers; parties to the Commission's proceeding; individuals who provided scoping comments or commented on the draft EIS; and individuals who requested to remain on the environmental mailing list for this project. Hard copy versions of the EIS were mailed to those specifically requesting them; all others received a CD–ROM version.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–54). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

The BLM and USFS will issue separate Records of Decision for this project. As part of the BLM and USFS decision-making processes, certain additional steps must be completed. Details on how to participate in those processes are provided below.

BLM Record of Decision

The BLM is soliciting comments on the final EIS specific to impacts on lands administered by the BLM. If you wish to submit written comments on the final EIS to the BLM for consideration in its Record of Decision, they must be submitted within 30 calendar days from the date that the Environmental Protection Agency publishes the Notice of Availability of the Ruby Pipeline Project final EIS. You may use any of the following methods:

Web site: http://www.blm.gov/nv/st/en/info/nepa/ruby_pipeline_project.html.

E-mail: blmruby@blm.gov.

Mail: Mark Mackiewicz, National Project Manager, Bureau of Land Management, Washington Office, c/o Price Field Office, 125 South 600 West, Price, UT 84501.

Phone: (435) 636–3616.

USFS Draft Record of Decision

The Forest Supervisor of the Fremont-Winema National Forests has determined that the Forest Plan amendments discussed in section 1.5.1 of the final EIS are not significant and may be implemented if the BLM grants the right-of-way for the Ruby pipeline to cross the Fremont National Forest. This decision is being based on the final EIS for the Ruby Pipeline Project, the FERC consolidated public record for the Ruby Pipeline Project, and the Ruby Pipeline Evaluation Report for Forest Plan Amendments (see Appendix C of the final EIS). A copy of the draft Record of Decision can be obtained by any of the following methods:

Web site: http://www.fs.fed.us/r6/frewin/projects/analyses/index.shtml.

E-mail: gwestlund@fs.fed.us.

Mail: Glen Westlund, Fremont-Winema Environmental Coordinator, 2819 Dahlia Street, Klamath Falls, OR 97601.

Phone: (541) 883–6743.

This USFS decision is subject to objection pursuant to the provisions available during the planning rule transition period as described at Title 36 Code of Federal Regulations (CFR), Part 219, Section 219.35(b) (published in the **Federal Register** [FR] at 65 FR 67514 [November 9, 2000]; *see* also 36 CFR 219 Interpretive Rule published at 66 FR 1864 [January 10, 2001]) and found at *http://www.fs.fed.us/appeals/appeals_related.php#app_work.* The objection procedures found at 36 CFR 219.32 (published in the **Federal Register** at 65 FR 67578 [November 9, 2000]) apply.

The objection to the USFS decision must be filed within 30 calendar days from the date that the Environmental Protection Agency publishes the Notice of Availability of the Ruby Pipeline Project final EIS. Within 10 days after the close of the objection period, the Fremont-Winema National Forest shall publish notice of all objections in the Klamath Falls Herald and News, the paper of record.

The objection to the USFS decision must be filed with the Reviewing Officer, Mary Wagner, Regional Forester, ATTN 1570 Objections, P.O. Box 3623, Portland, OR 97208–3623 and must contain:

(1) The name, mailing address, and telephone number of the person filing the objection;

(2) A specific statement of the basis for each objection; and

(3) A description of the objector's participation in the planning process for the proposed amendment, including a copy of any relevant documents submitted during the planning process.

The street location for hand delivery of the objection to the USFS decision is: 333 SW 1st Ave, Portland, OR (*office hours:* 8–4:30 M–F). Send faxes to 503–808–2255. The objection may be e-mailed to: *appeals-pacificnorthwest-regional-office@fs.fed.us.* For electronically mailed appeals, the sender should normally receive an automated electronic acknowledgement from the agency as confirmation of receipt. If the sender does not receive an automated receipt acknowledgement of the comments, it is the sender's responsibility to ensure timely receipt by other means.

Should you file an objection with the USFS regarding its decision you may request meetings with the reviewing officer and the responsible official to discuss the objection, to narrow the issues, agree on facts, and explore opportunities for resolution. Other interested persons may participate in such meetings provided they file a request to participate in an objection within ten days after publication of the notice of objection described above.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–923 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF10–4–000]

Southwestern Power Administration; Notice of Filing

January 8, 2010.

Take notice that on January 5, 2010, the Deputy Secretary of the Department of Energy, pursuant to the authority vested by sections 301(b), 302(a), 402(e), 641, 642, 643, and 644, and by Delegation Order Nos. 00–037.00 (December 6, 2001) and 00–001.00C (January 31, 2007), confirmed, approved, and placed in effect on an interim basis in Rate Order SWPA–62, Southwestern Power Administration Integrated System Rates, Rate Schedule P–09, Wholesale Rates for Hydro Peaking Power, Rate Schedule NFTS–09, Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service, and Rate Schedule EE–09, Wholesale Rate for Excess Energy, for period January 1, 2010 through September 30, 2013.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–918 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–553–000]

Hannaford Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 8, 2010.

This is a supplemental notice in the above-referenced proceeding of Hannaford Energy, 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 January 28, 2010.

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 Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–922 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09–1048–000; ER09–1049–000; ER09–1050–000; ER09–1192–000; ER09–1051–000; ER09–1063–000; ER09–1142–000]

California Independent System Operator Corporation; Midwest Independent Transmission System Operator, Inc; . Southwest Power Pool, Inc.; ISO New England, Inc. and New England Power Pool; PJM Interconnection, LLC; New York Independent System Operator, Inc.; Notice Providing Agenda for Technical Conference on RTO/ISO Responsiveness

January 8, 2010.

On November 13, 2009, the Commission issued a notice announcing that the Commission staff would hold a technical conference in the near future to address issues raised in the above-referenced Order No. 719 compliance proceedings.[1] The notice indicated that the date, time, and agenda for the conference would be announced in a subsequent notice.

The staff technical conference will be held on Thursday, February 4, 2010, from 12:30 p.m. to 4:30 p.m. (EST) in the Commission Meeting Room at the Commission's Washington, DC headquarters, 888 First Street, NE.

As described in the November 13 Notice, this conference is intended to provide a forum for participants to

[1] *Wholesale Competition in Regions with Organized Electric Market,* Order No. 719, 73 FR 64,100 (Oct. 28, 2008), FERC Stats & Regs. ¶ 31,281 (2008); *order onreh'g,* 74 FR 37,772 (July 29, 2009), 128 FERC ¶ 61,059 (2009) (Order No. 719–A).

discuss issues related to the responsiveness of regional transmission organizations (RTOs) and independent system operators (ISOs) to their customers and other stakeholders. Various parties filed specific proposals in the above-referenced proceedings to address perceived problems with stakeholder and Board processes and configurations. For example, during the Order No. 719 compliance period, the Ohio Consumers' Council filed a motion to lodge a report on RTO/ISO governance written by the National Association of State Utility Consumer Advocates (NASUCA). In the report, NASUCA argues that existing RTO/ISO structures prevent effective participation by end-user consumers for three reasons: (1) The decision making process is complicated, (2) the decision making process is time intensive, and (3) most consumers and their advocates lack the resources required to meaningfully monitor and influence the stakeholder process. NASUCA argues that for these reasons, there is a lack of adequate retail consumer involvement under the current structure, which may lead to decisions that do not adequately consider the price of electricity to residential consumers.

To address these concerns, NASUCA recommends the Commission take action to reorganize the RTO/ISO stakeholder process and governance structure. First, NASUCA states that it is necessary to have all RTO/ISO Board meetings open to the public and include remote participation by teleconference wherever possible. Next, NASUCA proposes a revised governance structure that reflects consumer interests at the Board level, through the inclusion of two Board members with Consumer Advocate experience, at the Committee level, through a Standing Committee dedicated to Consumer Affairs, and within the RTO/ISO, through a Division of Consumer Affairs. NASUCA also recommends the creation of a funding mechanism, via RTO/ISO fees, which would provide resources for public representatives of consumers to support consumer positions at all levels of the stakeholder process.

In addition to the proposals made by NASUCA, other commenters argue that RTOs and ISOs must take further steps to satisfy the criteria established in Order No. 719 on responsiveness to customers and other stakeholders, including proposals to reduce the number of RTO and ISO meetings by streamlining approval processes and to include language in RTO and ISO mission statements reflecting consumer interests.

The technical conference will provide the Commission staff with the opportunity to further explore these concerns and proposals with the parties and the RTOs and ISOs. These dockets will remain open for 30 days following the conference in order to provide an opportunity for the filing of written comments. Attached is an agenda for the conference.

This conference will be webcast. All interested parties are invited, and there is no registration fee to attend.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Questions about the technical conference may be directed to Kurt Longo at *kurt.longo@ferc.gov,* (202) 502–8048.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–919 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF09–15–000]

Dominion Transmission, Inc.; Notice of Public Scoping Meetings for the Appalachian Gateway Project

January 8, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Appalachian Gateway Project involving construction and operation of facilities by Dominion Transmission, Inc. (DTI) in northeastern West Virginia (WV) and southwestern Pennsylvania (PA). The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the dates and locations of the scoping meetings FERC staff will be holding to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. You are invited to attend the public scoping meetings that have been scheduled as follows:

Wednesday, January 20, 2010 at 6 p.m. (EST), Youghiogheny Ballroom, 100 Riverside Drive, West Newton, PA.

Thursday, January 21, 2010 at 6 p.m.(EST), Waynesburg Central High School—Auditorium, 30 Zimmerman Drive, Waynesburg, PA.

Wednesday, January 27, 2010 at 6 p.m. (EST), Valley High School—Auditorium, One Lumberjack Lane, Pine Grove, WV.

Thursday, January 28, 2010 at 6 PM (EST), Riverside High School—Auditorium, #1 Warrier Way, Belle, WV.

This notice is being sent to the Commission's current environmental mailing for this project, which includes affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Planned Project

DTI plans to construct and operate approximately 110 miles of 20-, 24-, and 30-inch diameter natural gas pipeline and associated aboveground facilities in northeastern West Virginia and southwestern Pennsylvania. According to DTI, its project would provide about 484,260 dekatherms of natural gas per day of firm transportation services from increasing gas production in the Appalachian region of West Virginia and Pennsylvania to the east coast markets.

The Appalachian Gateway Project would consist of the following facilities:

- Approximately 43.1 miles of 30-inch diameter pipeline in Marshall County, WV and Greene County, PA;
- Approximately 54.2 miles of 24-inch diameter pipeline in Greene, Washington, Allegheny, and Westmoreland Counties, PA;
- Approximately 5.2 miles of 20-inch diameter pipeline loop in Kanawha County, WV and 6 miles of 24-inch diameter pipeline loop in Greene County, PA; [1]
- A total of approximately 1.5 miles of various diameter discharge and suction pipelines to serve the Lewis-Wetzel Compressor Station (Wetzel County, WV) and the Morrison Compressor Station (Harrison County, WV);
- Two new compressor stations on new sites: Burch Ridge Station

[1] A pipeline loop is constructed parallel to an existing pipeline to increase capacity.

(Marshall County, WV) with approximately 6,130 horsepower (HP) and Morrison Station (Harrison County, WV) with approximately 1,775 HP;

- Two new compressor stations on existing sites: Chelyan Station (Kanawha County, WV) with approximately 4,735 HP and Lewis Wetzel Station (Wetzel County, WV) with approximately 3,550 HP;
- A new metering and regulation facility at the existing Oakford Compressor Station in Westmoreland County, PA; and
- Upgrades and minor additions to other existing facilities in Wyoming, Doddridge, McDowell, and Barbour Counties, WV.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field (PF09–15). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact 202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, any additional public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–916 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at Organization of MISO States and Midwest ISO Meetings

January 12, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following Midwest Independent Transmission System Operator, Inc.-related and Organization of MISO States (OMS) meetings:

Regional Expansion and Criteria & Benefits Task Force

January 14, 2010, Thursday, St. Paul, MN; 9 a.m. to 5 p.m. CT
January 15, 2010, Friday, St. Paul, MN; 8 a.m. to 12 p.m. CT
January 25, 2010, Monday, Carmel, IN; 2 p.m. to 5 p.m. ET
January 26, 2010, Tuesday, Carmel, IN; 9 a.m. to 4 p.m. ET
February 11, 2010, Thursday, St. Paul, MN; 9 a.m. to 5 p.m. CT
February 12, 2010, Friday, St. Paul, MN; 8 a.m. to 12 p.m. CT
February 22, 2010, Monday, Carmel, IN; 12 p.m. to 5 p.m. ET
February 23, 2010, Tuesday, Carmel, IN; 9 a.m. to 4 p.m. ET
March 11, 2010, Thursday, St. Paul, MN; 9 a.m. to 5 p.m. CT
March 12, 2010, Friday, St. Paul, MN; 8 a.m. to 12 p.m. CT
March 22, 2010, Monday, Carmel, IN; 12 p.m. to 5 p.m. ET
March 23, 2010, Tuesday, Carmel, IN; 9 a.m. to 4 p.m. ET
April 8, 2010, Thursday, St. Paul, MN; 9 a.m. to 5 p.m. CT
April 9, 2010, Friday, St. Paul, MN; 8 a.m. to 12 p.m. CT
April 19, 2010, Monday, Carmel, IN; 12 p.m. to 5 p.m. ET
April 20, 2010, Tuesday, Carmel, IN; 9 a.m. to 4 p.m. ET
May 13, 2010, Thursday, St. Paul, MN; 9 a.m. to 5 p.m. CT
May 14, 2010, Friday, St. Paul, MN; 8 a.m. to 12 p.m. CT
May 24, 2010, Monday, Carmel, IN; 12 p.m. to 5 p.m. ET
May 25, 2010, Tuesday, Carmel, IN; 9 a.m. to 4 p.m. ET
June 10, 2010, Thursday, St. Paul, MN; 9 a.m. to 5 p.m. CT
June 11, 2010, Friday, St. Paul, MN; 8 a.m. to 12 p.m. CT
June 21, 2010, Monday, Carmel, IN; 12 p.m. to 5 p.m. ET
June 22, 2010, Tuesday, Carmel, IN; 9 a.m. to 4 p.m. ET
July 8, 2010, Thursday, St. Paul, MN; 9 a.m. to 5 p.m. CT
July 9, 2010, Friday, St. Paul, MN; 8 a.m. to 12 p.m. CT
July 19, 2010, Monday, Carmel, IN; 12 p.m. to 5 p.m. ET
July 20, 2010, Tuesday, Carmel, IN; 9 a.m. to 4 p.m. ET

OMS Cost Allocation and Regional Planning

January 12, 2010, Tuesday: Hilton Garden Inn, 411 Minnesota Street, St. Paul, MN, 8 a.m. to 5 p.m. CT.
January 13, 2010, Wednesday: Hilton Garden Inn, 411 Minnesota Street, St. Paul, MN, 8 a.m. to 5 p.m. CT.
February 9, 2010, Tuesday, St. Paul, MN; 8 a.m. to 5 p.m. CT
February 10, 2010, Wednesday, St. Paul, MN; 8 a.m. to 5 p.m. CT
March 9, 2010, Tuesday, St. Paul, MN; 8 a.m. to 5 p.m. CT
March 10, 2010, Wednesday, St. Paul, MN; 8 a.m. to 5 p.m. CT

All meetings scheduled to be held in Carmel will take place at: Midwest ISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

Except as otherwise noted above, the meetings scheduled to be held in St. Paul will take place at:

1125 Energy Park Drive, St. Paul, MN 55108, and
Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, MN 55101–2147.

Further information may be found at *http://www.midwestiso.org.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. AD07–12, *Reliability Standard Compliance and Enforcement in Regions with Independent System Operators and Regional Transmission Organizations*
Docket Nos. EC06–4 and ER06–20, *Louisville Gas and Electric Company, et al.*
Docket No. ER02–488, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER02–2595, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER04–375, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket Nos. ER04–458, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER04–691, EL04–104 and ER04–106, *et al., Midwest Independent Transmission System Operator, Inc., et al.*

Docket No. ER05–6, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–636, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–752, *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. ER05–1047, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1048, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1083, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–1085, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1138, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1201, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1230, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL05–103, *Northern Indiana Power Service Co. v. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. EL05–128, *Quest Energy, L.L.C.* v. *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER06–18, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–22, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–27, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–56, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–192, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–356, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–360, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–532, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–731, *Independent Market Monitor for the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–866, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–881, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–1420, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–1536, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–1552, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL06–31, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL06–49, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL06–80, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–53, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–478, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–532, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–580, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–815, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–940, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER07–1141, *International Transmission Co., et al.*
Docket No. ER07–1144, *American Transmission Co. LLC, et al.*
Docket No. ER07–1182, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER07–1233 and ER07–1261, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–1372, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–1375, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–1388, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–1417, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL07–44, *Dakota Wind Harvest, LLC v. Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL07–79, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. EL07–86, EL07–88, EL07–92, *Ameren Services Co., et al. v. Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL07–100, *E.ON U.S. LLC* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–15, *Midwest ISO Transmission Owners*
Docket No. ER08–55, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER08–109, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER08–185 and ER08–186, *Ameren Energy Marketing Company, et al.*
Docket No. ER08–207, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–209, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–269, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–296, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–320, *Midwest Independent Transmission System Operator, Inc.*
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Docket No. ER08–1074, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1169, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1244, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1252, *Midwest Independent Transmission System Operator, Inc.*
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Docket No. ER08–1309, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER08–1370, *Midwest Independent Transmission System Operator, Inc.*

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Docket No. ER09–1049, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1074, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1126, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1369, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1396, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1422, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1431, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1432, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1435, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1526, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1543, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1575, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1581, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1619, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1719, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1727, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1769, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–1779, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–8, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–27, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–277, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–279, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–224, *Midwest Independent Transmission System Operator, Inc.*
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Docket No. OA07–57, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–4, *Midwest ISO Transmission Owners, et al.*
Docket No. OA08–14, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–42, *Midwest Independent Transmission System Operator, Inc.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–106, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA09–7, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. RR07–2, *et al., Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization, et al.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Kimberly D. Bose,
Secretary.

[FR Doc. 2010–912 Filed 1–19–10; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at Midwest ISO Meetings

January 12, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following Midwest ISO-related meetings:

- Advisory Committee (10 a.m.–3 p.m., ET)
  - January 20
  - February 17
  - March 17
  - May 19
  - June 16
  - July 14
  - August 18 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 15
  - October 20
  - November 17
  - December 1
- Board of Directors (8:30 a.m.–10 a.m., ET)
  - February 18
  - April 15 (Crowne Plaza Hotel, 123 West Louisiana St., Indianapolis, IN)
  - June 17
  - August 19 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - October 21
  - December 2
- Board of Directors Markets Committee (8 a.m.–10 a.m., ET)
  - February 17
  - March 17
  - April 14 (Crowne Plaza Hotel, 123 West Louisiana St., Indianapolis, IN)
  - May 19
  - June 16
  - July 14
  - August 18 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 15
  - October 20
  - November 17
  - December 1
- Midwest ISO Informational Forum (3 p.m.–5 p.m., ET)
  - January 19
  - February 16
  - March 16
  - May 18
  - June 15
  - July 13
  - August 17 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 14
  - October 19
  - November 16
  - December 14
- Midwest ISO Market Subcommittee (9 a.m.–5 p.m., ET)
  - January 5
  - February 2
  - March 2
  - March 30
  - May 4
  - June 1
  - June 29
  - August 3
  - August 31
  - October 5
  - November 2
  - December 7

Except as noted, all of the meetings above will be held at: Midwest ISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

- Fifth Annual Midwest ISO Stakeholders' Meeting (10 a.m.–5 p.m., ET)
  - April 14 (Crowne Plaza Hotel, 123 West Louisiana Street, Indianapolis, IN 46225)

Further information may be found at *http://www.midwestiso.org.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. AD07–12, *Reliability Standard Compliance and Enforcement in Regions with Independent System Operators and Regional Transmission Organizations*
Docket Nos. EC06–4 and ER06–20, *Louisville Gas and Electric Company, et al.*
Docket No. ER02–488, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER02–2595, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER04–375, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket Nos. ER04–458, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER04–691, EL04–104 and ER04–106, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–6, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–636, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–752, *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. ER05–1047, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1048, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1083, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER05–1085, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1138, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1201, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER05–1230, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL05–103, *Northern Indiana Power Service Co.* v. *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. EL05–128, *Quest Energy, L.L.C.* v. *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER06–18, *et al., Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–22, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–27, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–56, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER06–192, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–356, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–360, *et al., Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER06–532, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–731, *Independent Market Monitor for the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–866, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–881, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–1420, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–1536, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER06–1552, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL06–31, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL06–49, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. EL06–80, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–53, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–478, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–532, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–580, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–815, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER07–940, *Midwest Independent Transmission System Operator, Inc., et al.*
Docket No. ER07–1141, *International Transmission Co., et al.*
Docket No. ER07–1144, *American Transmission Co. LLC, et al.*
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Docket No. ER09–117, *Midwest Independent Transmission System Operator, Inc.*
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Docket No. ER09–160, *Midwest Independent Transmission System Operator, Inc.*

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Docket No. ER10–8, *Midwest Independent Transmission System Operator, Inc.*
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Docket No. ER10–277, *Midwest Independent Transmission System Operator, Inc.*
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Docket No. OA09–7, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. RR07–2, *et al., Delegation Agreement Between the North American Electric Reliability Corporation and Midwest Reliability Organization, et al.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–910 Filed 1–19–10; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

January 14, 2010.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 21, 2010, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **NOTE**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

955TH—MEETING; REGULAR MEETING, JANUARY 21, 2010, 10 A.M.

Item No	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters—FERC Strategic Plan.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM09–16–000	Control and Affiliation for Purposes of Market-Based Rate Requirements under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act.
E–2	RM10–13–000	Credit Reforms in Organized Wholesale Electric Markets.
E–3	RM10–12–000	Electricity Market Transparency Provisions of Section 220 of the Federal Power Act.
E–4	RM10–11–000	Integration of Variable Energy Resources.
E–5	ER09–75–002	Pioneer Transmission, LLC.
E–6	EL10–19–000	Western Grid Development, LLC.
E–7	ER09–1051–000	ISO New England Inc. and New England Power Pool.
E–8	RM08–7–002	Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.
E–9	RM10–9–000	Transmission Loading Relief Reliability Standard and Curtailment Priorities.
E–10	RR10–1–000	North American Electric Reliability Corporation.
E–11	RD09–10–000	North American Electric Reliability Corporation.
E–12	ER09–1247–002, ER09–1247–003, ER09–1247–004.	California Independent System Operator Corporation.
E–13	ER10–305–000, EL10–5–000, ER95–1207–000.	Xcel Energy Services Inc. Public Service Company of Colorado.
	ER09–980–001	Western Systems Power Pool Inc.
E–14	EL09–40–000	Southwest Power Pool, Inc.
E–15	EL10–7–000	Power and Water Resources Pooling Authority, Complainant, v. Pacific Gas and Electric Company, Respondent.
E–16	OA08–62–005	California Independent System Operator Corporation.
E–17	EL05–121–006	PJM Interconnection, L.L.C.
	Miscellaneous	
M–1	RM01–5–000	Electronic Tariff Filings.
	Gas	
G–1	RM08–2–001	Pipeline Posting Requirements under Section 23 of the Natural Gas Act.
G–2	RP06–569–000, RP07–376–000 (consolidated).	Transcontinental Gas Pipe Line Corporation.
G–3	RP09–809–001, RP09–809–000	Maritimes & Northeast Pipeline, L.L.C.
	Hydro	
H–1	P–11879–029	Fall River Rural Electric Cooperative, Inc.
H–2	P–2197–097	Alcoa Power Generating Inc.
H–3	P–2417–061	Northern States Power Company.

Certificates

There are no Certificate items scheduled at this time.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated

overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2010–1005 Filed 1–15–10; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–37–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

January 8, 2010.

Take notice that on December 30, 2009, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP10–37–000 a prior notice request pursuant to Northern's blanket authority granted on September 1, 1982, at Docket No. CP82–401–000 and sections 157.205 and 157.214 of the Commission's regulations under the Natural Gas Act for authorization to increase its maximum storage capacity at its Redfield Storage Field in Dallas County, Iowa from 130.551 Bcf to 133.750 Bcf to provide interruptible storage service, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Bret Fritch, Senior Regulatory Analyst, at (402) 398–7140.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–917 Filed 1–19–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8807–7]

Access to Confidential Business Information by Versar Inc. and Its Identified Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized contractor, Versar Inc. of North Springfield, VA and its subcontractor, to access information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data is expected to occur on or before January 31, 2010.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8257; fax number: (202) 564–8251; e-mail address: *sherlock.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number EP–W–10–005, contractor Versar of 6850 Versar Center, North Springfield, VA and its subcontractor Syracuse Research Corporation (SRC) of 7502 Round Pond

Rd., Room B–116, N Syracuse, NY and Crystal Park 5, 2451 Crystal Drive, Suite 804, Arlington, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in evaluating the exposure of new chemical substances, including microorganisms and nanomaterials. They will also assist in evaluating the fate and exposure of existing chemicals and review data bearing on the fate and exposure of such chemicals. In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number (EP–W–10–005), Versar and its subcontractor will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. Versar and its subcontractor's personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Versar and its subcontractor access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and SRC's sites located at 7502 Round Pond Rd., Room B–116, N Syracuse, NY and Crystal Park 5, 2451 Crystal Drive, Suite 804, Arlington, VA in accordance with EPA's TSCA CBI Protection Manual.

Access to TSCA data, including CBI, will continue until December 31, 2014. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Versar and its subcontractor's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: January 13, 2010.

Matthew Leopard,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2010–958 Filed 1–19–10; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0129; FRL–8806–7]

Sulfometuron Methyl Amendment to Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's decision to modify certain risk mitigation measures that were specified in the 2008 Reregistration Eligibility Decision (RED) for the herbicide sulfometuron methyl. EPA conducted this reassessment of the Sulfometuron Methyl RED in response to public comments and risk reduction proposals received during the comment period following the Sulfometuron Methyl RED. Based on the new information received, and in a continuing effort to mitigate risk, the Agency has made certain modifications to the Sulfometuron Methyl RED.

FOR FURTHER INFORMATION CONTACT: Rusty Wasem, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6979; fax number: (703) 308–7070; e-mail address: *wasem.russell@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users, and members of the public interested in the sale, distribution, or use of pesticides. Since other parties may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0129. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov* (EPA–HQ–OPP–2008–0129), or in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to reevaluate existing pesticides to ensure that they meet current scientific and regulatory standards. In 2008, EPA issued a RED for sulfometuron methyl under section 4(g)(2)(A) of FIFRA. In response to a notice of availability published in the **Federal Register** of November 12, 2008 (73 FR 219) (FRL–8388–5), the Agency received comments and mitigation proposals submitted by the technical registrant, user groups, and individuals. The Agency's response to comments is available for viewing in the docket. The amended Sulfometuron Methyl RED reflects changes resulting from Agency consideration of these comments and mitigation proposals. The RED amendment for sulfometuron methyl concludes EPA's reregistration eligibility decision making process for this herbicide.

Stakeholder comments, mitigation proposals, and other information received by the Agency following the publication of the Sulfometuron Methyl RED allowed EPA to further refine the ecological risk assessment for non-target plant species and to revise the buffer zone requirements for sulfometuron methyl. Based on the comments and proposals, EPA also refined the occupational handler exposure risk estimates and revised the personal protective equipment (PPE) requirements for sulfometuron methyl. The label table incorporated into the Sulfometuron Methyl RED amendment includes modifications which specify label language for required application parameters, buffer zones, and PPE requirements.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing the active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and

either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests, Sulfometuron methyl.

Dated: January 12, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–834 Filed 1–19–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0091; FRL–8806–8]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0091. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. EUP

EPA has issued the following EUP:

29964-EUP-6 —*Issuance*. Pioneer Hi-Bred International, Incorporated, 2450 Southeast Oak Tree Court, Ankeny, IA 50021. This EUP allows the use of the following plant-incorporated protectants:

1. *Bacillus thuringiensis* Cry1F protein and the genetic material necessary (vector PHP8999) for its production in corn event TC1507 [Organization for Economic Cooperation and Development (OECD) Unique Identifier: DAS-01507-1]
2. *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary (vector PHP17662) for their production in corn event DAS-59122-7 (OECD Unique Identifier: DAS-59122-7)
3. *Bacillus thuringiensis* Cry1Ab delta-endotoxin protein and the genetic material necessary (vector pZO1502) for its production in corn event *Bt*11 (OECD Unique Identifier: SYN-BT011-1)
4. *Bacillus thuringiensis* Cry1Ab delta-endotoxin protein and the genetic material necessary (vector PV-ZMCT01) for its production in corn event MON 810 (OECD Unique Identifier: MON-00810-6)
5. *Bacillus thuringiensis* Vip3Aa20 insecticidal protein and the genetic material necessary (vector pNOV1300) in corn event MIR162 (OECD Unique Identifier: SYN-IR162-4)
6. *Bacillus thuringiensis* mCry3A protein and the genetic material necessary (vector pZM26) in corn event MIR604 (OECD Unique Identifier: SYN-IR604-5)

These plant-incorporated protectants will be planted in the following combinations:

- TC1507 x DAS-59122-7 x MON 810
- TC1507 x MON 810
- DAS-59122-7 x MON 810
- TC1507
- DAS-59122-7
- MON 810
- TC1507 x DAS-59122-7
- *Bt*11
- MIR604
- MIR162
- *Bt*11 x MIR604
- *Bt*11 x MIR162
- *Bt*11 x MIR162 x MIR604
- TC1507 x DAS-59122-7 x MON 810 x MIR162
- TC1507 x DAS-59122-7 x MON 810 x MIR604
- TC1507 x DAS-59122-7 x MIR162 x MIR604
- TC1507 x MON 810 x MIR162 x MIR604
- DAS-59122-7 x MON 810 x MIR162 x MIR604
- TC1507 x DAS-59122-7 x MIR162
- TC1507 x DAS-59122-7 x MIR604
- TC1507 x MON 810 x MIR162
- TC1507 x MON 810 x MIR604
- TC1507 x MIR162 x MIR604
- DAS-59122-7 x MON 810 x MIR162
- DAS-59122-7 x MON 810 x MIR604
- DAS-59122-7 x MIR162 x MIR604
- MON 810 x MIR162 x MIR604
- TC1507 x MIR162
- TC1507 x MIR604
- DAS-59122-7 x MIR162
- DAS-59122-7 x MIR604
- MON 810 x MIR162
- MON 810 x MIR604
- MIR162 x MIR604

The quantity authorized equates to 68,066 pounds of corn seed [containing 62 grams (0.137 pounds) of Cry1F protein, 787 grams (1.74 pounds) of Cry34Ab1 and Cry35Ab1 proteins, 27 grams (0.060 pounds) of Cry1Ab protein, 347 grams (0.765 pounds) of Vip3Aa20 protein, and 11 grams (0.024 pounds) of mCry3A protein] on 4,126 acres. The program is authorized only in the Commonwealth of Puerto Rico and the States of Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Mississippi, North Carolina, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Washington, and Wisconsin. The EUP is effective from April 22, 2009, to March 31, 2010, and allows for trial protocols—concentrating on nursery/breeding observation, yield and agronomic evaluation, efficacy, insect resistance management, seed production, and regulatory studies—to be conducted. Under 40 CFR Part 174, permanent exemptions from tolerance have been established for residues of each of the active ingredients in or on all corn commodities.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 7, 2010.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–956 Filed 1–19–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0917; FRL–8805–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before February 19, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0917, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0917. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Menyon Adams, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8496; e-mail address: *adams.menyon@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *File Symbol*: 84846–G. *Applicant*: Floratine Biosciences, Inc. 153 N. Main St., Suite 100, Collierville, TN 38017. *Product name*: Carbon Power Concentrate. Plant growth regulator. *Active ingredient*: Polymeric polyhydroxy acid at 2%. *Proposed classification/Use*: Manufacturing use only: For use only in formulating agricultural pesticide formulations, plant growth, regulators, herbicides, fungicides, seed treatments, and other agricultural pesticide formulations.

2. *File Symbol*: 84846–E. *Applicant*: Floratine Biosciences, Inc. *Product name*: Carbon Power®. Plant growth regulator. *Active ingredient*: Polymeric polyhydroxy acid at 00.40%. *Proposed classification/Use*: For use in or on all food commodities.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 6, 2010.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–580 Filed 1–19–10; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 2, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Moross Limited Partnership, Grosse Pointe Park, Michigan, together with Riddle Limited Partnership, Howell, Michigan, to retain control of FNBH Bancorp, Inc., Howell, Michigan, and thereby indirectly retain shares of First National Bank in Howell, Howell, Michgan. Moross is controlled by Pacesetter Management, Inc., Howell, Michigan, and Pacesetter is wholly owned and controlled by Stanley B. Dickson, Jr.. Riddle Limited Partnership is controlled by Kathryn J. Dickson, Howell, Michigan.

Board of Governors of the Federal Reserve System, January 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–852 Filed 1–19–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, January 25, 2010.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, January 15, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–1036 Filed 1–15–10; 11:15 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Federal Acquisition Regulation; Submission for OMB Review; Cost Accounting Standards Administration

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0129).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning cost accounting standards administration. A request for public comments was published in the **Federal Register** at 74 FR 58628, on November 13, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 19, 2010.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat

(MVPR), 1800 F Street, Room 4041, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Contract Policy Branch, GSA, (202) 501–3221 or e-mail at *edward.chambers@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 30.6 and the provision at 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

Number of Respondents: 644.
Responses per Respondent: 2.27.
Total Responses: 1,462.
Average Burden Hours per Response: 175.00.
Total Burden Hours: 255,829.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, Room 4041, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 2010–994 Filed 1–19–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Women's Health Initiative Observational Study

SUMMARY: 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 National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Women's Health Initiative (WHI) Observational Study. *Type of Information Collection Request:* Revision OMB #0925–0414. *Need and Use of Information Collection:* This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. Continuation of follow-up for ascertainment of medical history update forms will provide essential data for outcomes assessment for this population of aging women. *Frequency of Response:* Annually. *Affected Public:* Individuals or households and health care providers. *Type of Respondents:* Women, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average hours per response	Annual hour burden
Observational Study Participants	42,550	1.12	.4155	19,800
Next of Kin [1]	941	1	.083	79
Health Care Providers [1]	8	1	.085	.63
Total	43,499			19,880

[1] Annual burden is placed on health care providers and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

The annualized cost to respondents is estimated at $397,617, assuming respondents time at the rate of $20 per hour and physician time at the rate of $50 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Shari Eason Ludlam, MPH, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7913, Bethesda, MD 20892–7934, or call non-toll-free number 301–402–2900 or E-mail your request, including your address to: *Ludlams@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 4, 2010.

Michael S. Lauer,

Director, Division of Cardiovascular Science, NHLBI, National Institutes of Health.

Dated: January 6, 2010.

Suzanne Freeman,

Chief, FOIA, NHLBI, National Institutes of Health.

[FR Doc. 2010–974 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0559]

Draft Guidance for Industry and Food and Drug Administration Staff; Heart Valves — Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled "Heart Valves — Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications." This draft guidance document describes FDA's recommendations about investigational device exemption and premarket approval applications for heart valves. This draft guidance document is not final, nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by April 20, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Heart Valves — Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Building 66, Room 4613, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Carolyn D. Vaughan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1230, Silver Spring, MD 20993, 301–796–6338.

SUPPLEMENTARY INFORMATION:

I. Background

On October 14, 1994, FDA issued a guidance document on replacement heart valves ("the 1994 draft"), before the implementation of FDA's good guidance practices regulation. FDA withdrew the 1994 draft on January 5, 2005 (70 FR 824) and is now issuing this new draft guidance document for public comment. This draft guidance document describes FDA's recommendations about manufacturing, preclinical in vitro bench testing, preclinical in vivo studies, clinical investigations, and labeling that are different from or in addition to the recommendations of the International Organization For Standardization (ISO), ISO 5840:2005, "Cardiovascular Implants — Cardiac Valve Prostheses" (ISO 5840). Although the draft guidance document provides complementary information to ISO 5840:2005, the draft guidance document can also be used with other methods equivalent to ISO 5840:2005.

II. Significance of Guidance

This draft guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance document, when finalized, will represent the agency's current thinking on "Heart Valves — Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive "Heart Valves — Investigational Device Exemption (IDE) and Premarket Approval (PMA) Applications," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document, or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number (1607).

CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/medicaldevices/deviceregulationandguidance/guidancedocuments/default.htm*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.regulations.gov*.

IV. Paperwork Reduction Act of 1995

This draft guidance document contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) (the PRA). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 58 have been approved under OMB control number 0910–0338; and the collections of information in parts 50 and 56 have been approved under OMB control number 0910–0130.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 9, 2010.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 2010–990 Filed 1–19–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Rapid Assessment for Drug Abuse and Risky Sex (5556).

Date: February 16, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–887 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse; Special Emphasis Panel; Clinical Trials Network.

Date: February 17, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Washington DC Lafayette Square 806 15th Street NW., Washington, DC 20005.

Contact Person: Kristen V Huntley, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–435–1433, *huntleyk@mail.nih.gov.*

Name of Committee: National Institute on Drug Abuse, Special Emphasis Panel, P30 Centers Review.

Date: February 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–451–4530, *elazarwe@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse, Special Emphasis Panel, P50 Centers Review.

Date: February 23–25, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Eliane Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–451–4530, *elazarwe@nida.nih.gov.*

Name of Committee: National Institute on Drug Abuse, Special Emphasis Panel, NIDA R13 Conference Grant Review.

Date: March 10, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *Gm145a@nih.gov.*

Name of Committee: National Institute on Drug Abuse; Special Emphasis Panel; NIDA I/START R03 Review.

Date: March 17, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *Gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–885 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Data Harmonization and Advanced Computation of Population Health Data.

Date: March 3, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural

Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Basal-like Breast Cancer Assay.

Date: March 10, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Savvas C. Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8050a, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Companion Diagnostics.

Date: March 11, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Savvas C. Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8050a, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, EDRN Data Management & Surveillance Modeling Network.

Date: March 16–17, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin, Old Town Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Marvin L. Salin, Ph.D, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Exceptional, Unconventional Research Enabling Knowledge Acceleration (EUREKA).

Date: March 29–30, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Adriana Stoica, PhD, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Ste. 703, Rm. 7072, Bethesda, MD 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–973 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training, Manpower & Training Grants.

Date: January 26–27, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.

Contact Person: Lynn M. Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–972 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ISD SRO Member Conflict.

Date: January 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Panel.

Date: February 5, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive Sciences and Development.

Date: February 8–9, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting.)

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDMA SRO Conflict.

Date: February 11–12, 2010.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical and Research Ethics.

Date: February 17, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting.)

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–982 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, February 10, 2010, 1 p.m. to February 10, 2010, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 11, 2010, 75 FR 1397–1399.

The meeting title has been changed to "PAR08–224: System Dynamics Methodologies". The meeting is closed to the public.

Dated: January 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–985 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

Date: February 1, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bukhtiar H. Shah, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: February 9–10, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.

Date: February 10–11, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: February 11–12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: February 11–12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khalid Masood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery for the Nervous System.

Date: February 11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaylord National Hotel & Convention Center, 201 Waterfront Street, National Harbor, MD 20745.

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, and Regeneration Study Section.

Date: February 11, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: February 11–12, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: SAT and BTSS Study Sections.

Date: February 11, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Probes.

Date: February 12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaylord National Hotel & Convention Center, 201 Waterfront Street, National Harbor, MD 20745.

Contact Person: Mary Custer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognition and Movement.

Date: February 15–16, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Addiction and Toxicity.

Date: February 16–17, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Research Partnerships and Imaging Member Conflicts.

Date: February 16, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict SEP: Molecular and Neurogenetics.

Date: February 17, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aidan Hampson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7850, Bethesda, MD 20892, (301) 435–0634, *hampsona@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: February 19, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–987 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, *In vivo* Cellular and Molecular Imaging Centers (ICMICs).

Date: March 8–9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington DC North Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301–496–7576, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Developing Research Capacity in Africa for the Studies on HIV-Associated Malignancies.

Date: March 15, 2010.

Time: 7:45 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Ilda M Mckenna, Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–992 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 8–9, 2010.

Time: March 8, 2010, 8 a.m. to 6 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Group(s); and Budget Presentations; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Room 10, Bethesda, MD 20892.

Time: March 9, 2010, 8:30 a.m. to 12 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147, *grayp@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 13, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–993 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NIH State-of-the-Science Conference: Preventing Alzheimer's Disease and Cognitive Decline; Notice

Notice is hereby given by the National Institutes of Health (NIH) of the "NIH State-of-the-Science Conference: Preventing Alzheimer's Disease and Cognitive Decline" to be held April 26–28, 2010, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on April 26 and 27 and at 9 a.m. on April 28, and it will be open to the public.

For many older adults, cognitive health and performance remain stable over the course of their lifetime, with only a gradual and slight decline in short-term memory and reaction times. But for others, this normal, age-related decline in cognitive function progresses into a more serious state of cognitive impairment or into various forms of dementia, including Alzheimer's disease. Such loss of cognitive function—the ability to think, learn, remember, and reason—substantially interferes with everyday function. As researchers continue to explore changes in the brain that take place possibly decades before cognitive decline and dementia symptoms appear, they also hope to discover more about the relationship between normal age-related cognitive decline and the development of cognitive impairment or Alzheimer's disease.

Alzheimer's disease was first described in 1906, when German psychiatrist and neuropathologist Alois Alzheimer observed the hallmarks of the disease in the brain of a female patient who had experienced memory loss, language problems, and unpredictable behavior: abnormal clumps of protein (now called beta-amyloid plaques) and tangled bundles of protein fibers (now called neurofibrillary tangles). Today, an estimated 2.5 to 4.5 million Americans are living with Alzheimer's, the most common form of dementia, and those numbers are expected to grow with the aging of the baby boomer population. Age is the strongest known risk factor for Alzheimer's, with most people diagnosed with the late-onset form of the disease over age 60. An early-onset, familial form also occurs, but is very rare. The time from diagnosis to death with Alzheimer's ranges from as little as 3 years to 10 or more, depending on the person's age, sex, and the presence of other health problems.

In addition to investigating the causes and potential treatments for Alzheimer's and other dementias, researchers are focused on finding ways to prevent cognitive decline. Many preventive measures for cognitive decline and for preventing Alzheimer's—mental stimulation, exercise, and a variety of dietary supplements—have been suggested, but their value in delaying the onset and/or reducing the severity of decline or disease is unclear. Questions also remain as to how the presence of certain conditions, such as high cholesterol, high blood pressure, and diabetes, influence an individual's risk of cognitive decline and Alzheimer's disease.

To examine these important questions about Alzheimer's and cognitive decline in older people, the National Institute on Aging and the Office of Medical Applications of Research of the NIH will convene a State-of-the-Science Conference from April 26 to 28, 2010, to assess the available scientific evidence related to the following questions:

- What factors are associated with the reduction of risk of Alzheimer's disease?
- What factors are associated with the reduction of risk of cognitive decline in older adults?
- What are the relationships between the factors that affect Alzheimer's disease and the factors that affect cognitive decline?
- What are the therapeutic and adverse effects of interventions to delay the onset of Alzheimer's disease?
- What are the therapeutic and adverse effects of interventions to improve or maintain cognitive ability or preserve cognitive function? Are there different outcomes in identifiable subgroups?
- If recommendations for interventions cannot be made currently,

what studies need to be done that could provide the quality and strength of evidence necessary to make such recommendations to individuals?

An impartial, independent panel will be charged with reviewing the available published literature in advance of the conference, including a systematic literature review commissioned through the Agency for Healthcare Research and Quality. The first day and a half of the conference will consist of presentations by expert researchers and practitioners and open public discussions. On Wednesday, April 28, the panel will present a statement of its collective assessment of the evidence to answer each of the questions above. The panel will also hold a press telebriefing to address questions from the media. The draft statement will be published online later that day, and the final version will be released approximately six weeks later. The primary sponsors of this meeting are the NIH National Institute on Aging and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from the NIH Consensus Development Program Information Center by calling 888–644–2667 or by sending e-mail to *consensus@mail.nih.gov*. The Information Center's mailing address is P.O. Box 2577, Kensington, Maryland 20891. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov*.

Please Note: The NIH has instituted security measures to ensure the safety of NIH employees, guests, and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm*.

Dated: January 11, 2010.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 2010–858 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Monoclonal Antibodies Against Smallpox/Orthopoxviruses

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a an exclusive license to practice the following invention as embodied in the following patent applications: E–145–2004/0,1,2,3,4, Purcell et al., "Monoclonal Antibodies Against Orthopoxviruses", United States Patent Application 12/142,594, filed June 19, 2008 to BioFactura, Inc., having a place of business in Rockville, Maryland. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before February 19, 2010 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Peter Soukas, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; *E-mail: ps193c@nih.gov; Telephone:* (301) 435–4646; *Facsimile:* (301) 402–0220.

SUPPLEMENTARY INFORMATION: Concerns that variola (smallpox) virus might be used as a biological weapon have led to the recommendation of widespread vaccination with vaccinia virus. While vaccination is generally safe and effective for prevention of smallpox, it is well documented that various adverse reactions in individuals have been caused by vaccination with existing licensed vaccines. Vaccinia immune globulin (VIG) prepared from vaccinated humans has historically been used to treat adverse reactions arising from vaccinia immunization. However, VIG lots may have different potencies and carry the potential to transmit other viral agents.

Chimpanzee Fabs against the B5 and A33 outer extracellular membrane proteins of vaccinia virus were isolated and converted into complete mAbs with human gamma1 heavy chain constant regions. The two mAbs displayed high binding affinities to B5 and A33. The mAbs inhibited the spread of vaccinia virus as well as variola virus (the causative agent of smallpox) in vitro, protected mice from subsequent intranasal challenge with virulent vaccinia virus, protected mice when administered two (2) days after challenge, and provided significantly greater protection than that afforded by VIG.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to monoclonal antibodies against orthopoxviruses (smallpox) for use in humans.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 12, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–977 Filed 1–19–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Saybolt LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 21730 S. Wilmington Ave., Suite 201, Carson, CA 90810, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested.

Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on September 23, 2009. The next triennial inspection date will be scheduled for September 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 12, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–947 Filed 1–19–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 300 George Street, East Alton, IL 62024, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on July 14, 2009. The next triennial inspection date will be scheduled for July 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 12, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–943 Filed 1–19–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of King Laboratories, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of King Laboratories, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, King Laboratories, Inc., 1300 E. 223rd St., #401, Carson, CA 90745, has been approved to gauge and accredited to test petroleum and petroleum products in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of King Laboratories, Inc., as commercial gauger and laboratory became effective on August 25, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 12, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–948 Filed 1–19–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Aircraft/Vessel Report (Form I–92)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0102.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Aircraft/Vessel Report (Form I–92). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 54839) on October 23, 2009, allowing for a 60-day comment period. Three comments were received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 19, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Aircraft/Vessel Report.

OMB Number: 1651–0102.

Form Number: I–92.

Abstract: The Form I–92 is part of manifest requirements of Sections 231 and 251 of the Immigration and Nationality Act. This Form is used to collect passenger and crew information from commercial and military airlines and vessels upon arrival in the U.S. at CBP ports of entry. The data collected on Form I–92 is also used by other agencies to develop statistics and trends in international travel, trade, and tourism.

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Carriers.

Estimated Number of Responses: 720,000.

Estimated Time per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 129,600.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: January 13, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–979 Filed 1–19–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN00000.L18200000.XZ0000]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The RAC will meet Wednesday and Thursday, Feb. 17–18, 2010, at the BLM Surprise Field Office, 602 Cressler Street, Cedarville, Calif. The meeting runs from 1 to 5 p.m. on Feb. 17, and from 8 a.m. to noon on Feb. 18. Time for public comments has been reserved at 4 p.m. on Thursday, Feb. 18.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 221–1743; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and the northwest corner of Nevada. At this meeting, agenda topics include an update on Sage Steppe Ecosystem Restoration Project work, a status report on alternative energy development proposals, a status report on the Ruby Pipeline proposal, a wild horse and burro program update, an update on American Reinvestment and Recovery Act projects, an activity update for the Black Rock Desert-High Rock Canyon-Emigrant Trails National Conservation Area, and updates from managers of the BLM Alturas, Eagle Lake and Surprise field offices. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: January 12, 2010.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2010–939 Filed 1–19–10; 8:45 am]

BILLING CODE 4310–40–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 January 2, 2010. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 4, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Pulaski County

Main Street Commercial Historic District, (Pulaski County MRA) 300 block of S. Main St. bounded by E. 3rd on the N. and E. 4th on the S., Little Rock, 10000001

IOWA

Clay County

Spencer High School and Auditorium, 104 E. 4th St., Spencer, 10000002

Wapello County

Garner, J.W., Building, (Ottumwa MPS) 222–224 E. 2nd St., Ottumwa, 10000003

MASSACHUSETTS

Norfolk County

Pond Street School, 235 Pond St., Weymouth, 10000004

MISSOURI

Jackson County

George, Todd M., Sr., House, (Lee's Summit, Missouri MPS) 408 SE. 3rd St., Lee's Summit, 10000007

NEW YORK

Essex County

Mt. Van Hoevenberg Olympic Bobsled Run, 220 Bob Run Ln., Lake Placid, 10000008

Kings County

Jewish Center of Kings Highway, 1202–1218 Ave. P., Brooklyn, 10000009
Kingsway Jewish Center, 2810 Nostrand Ave., Brooklyn, 10000010
Young Israel of Flatbush, 1012 Ave. I, Brooklyn, 10000011

New York County

Chinatown and Little Italy Historic District, Roughly bounded by Baxter St., Centre St., Cleveland Pl. and Lafayette St. to the W.; Jersey St. and E. Houston, New York, 10000012

Onondaga County

Skoler, Louis and Celia, Residence, The, 213 Scottholm Terrace, Syracuse, 10000013

Ulster County

Cumming-Parker House, 50 Appletree Rd., Esopus, 10000014

OREGON

Marion County

Salem Southern Pacific Railroad Station, 500 13th Ave. SE, Salem, 10000015

Multnomah County

Arnold-Park Log Home, 12000 SW. Boones Ferry Rd., Portland, 10000016

In the interest of preservation the comment period for the following resource has been shortened to three (3) days:

MASSACHUSETTS

Worcester County

Lancaster Mills, 1–55, 75, 99, 1–R Green St., 20 Cameron St., Clinton, 10000005

[FR Doc. 2010–906 Filed 1–19–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to 36 CFR 60.13(b) and (c) and 36 CFR 63.5, this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from October 26 to October 30.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th Floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: January 13, 2010.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

COLORADO

Delta County

Hotchkiss Methodist Episcopal Church, 285 N. 2nd St., Hotchkiss, 09000853, LISTED, 10/28/09

Weld County

Land Utilization Program Headquarters, 44741 Weld Co. Rd. 77, Briggsdale Vicinity, 09000854, LISTED, 10/29/09 (New Deal Resources on Colorado's Eastern Plains MPS)

CONNECTICUT

New London County

House at 130 Mohegan Avenue, 130 Mohegan Ave., New London, 08001379, LISTED, 10/28/09

MISSOURI

Clay County

First Methodist Church, 114 N. Marietta St., Excelsior Springs, 09000856, LISTED, 10/28/09

Dunklin County

Birthright, Charles and Bettie, House, 109 S. Main St., Clarkton, 09000857, LISTED, 10/30/09

St. Louis County

Downtown Kirkwood Historic District, 105–133 E. Argonne, 100–159 W. Argonne, 108–212 N. Clay, 105–140 E. Jefferson, 100–161 W. Jefferson, Kirkwood, 09000859, LISTED, 10/28/09

NEW YORK

Queens County

Rego Park Jewish Center, 97–30 Queens Blvd., Rego Park, 09000864, LISTED, 10/28/09

OREGON

Wallowa County

Wallowa Ranger Station, 602 W. 1st St., Wallowa, 09000865, LISTED, 10/28/09 (Depression-Era Buildings TR)

TEXAS

Harris County

Farnsworth & Chambers Building, 2999 S. Wayside, Houston, 09000866, LISTED, 10/29/09

[FR Doc. 2010–905 Filed 1–19–10; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–512]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2009 Review of a Competitive Need Limit Waiver

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request on December 30, 2009 from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–512, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2009 Review of a Competitive Need Limit Waiver.*

DATES:

February 2, 2010: Deadline for filing requests to appear at the public hearing.
February 4, 2010: Deadline for filing pre-hearing briefs and statements.
February 16, 2010: Public hearing.
February 26, 2010: Deadline for filing post-hearing briefs and statements and other written submissions.
March 30, 2010: Transmittal of report to the Office of the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington,

DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Philip Stone, Project Leader, Office of Industries (202–205–3424 or *philip.stone@usitc.gov*). For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).* 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.

Background: As requested by the USTR, under the authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, and in accordance with sections 503(d)(1)(A) of the Trade Act of 1974 (1974 Act) (19 U.S.C. 2463(d)(1)(A)), the Commission will provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for the following country and article provided for in the noted subheading of the Harmonized Tariff System (HTS): Thailand for HTS subheading 4011.10.10 (pneumatic radial tires). As requested, the Commission will also provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles, on total U.S. imports, and on consumers, of the petitioned waiver. In addition, as requested, the Commission will also provide information as to whether like or directly competitive products were being produced in the United States on January 1, 1995. As requested by the USTR, the Commission will use the dollar value limit of $140,000,000 for purposes of section 503(c)(2)(A)(i)(I) of the 1974 Act.

As requested by the USTR, the Commission will provide its advice by March 30, 2010. The USTR indicated that those sections of the Commission's report and related working papers that contain the Commission's advice will be classified as "confidential."

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on February 16, 2010. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m. on February 2, 2010. Any pre-hearing briefs and other statements relating to the hearing should be filed with the Secretary not later than 5:15 p.m. on February 4, 2010, and all post-hearing briefs and statements and any other written submissions should be filed with the Secretary not later than 5:15 p.m. on February 26, 2010. All requests to appear and pre- and post-hearing briefs and statements must be filed in accordance with the requirements in the "Written Submissions" section below. In the event that, as of the close of business on February 2, 2010, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Persons interested in learning whether the hearing has been canceled should call the Office of the Secretary after February 2, 2010, at 202–205–2000.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All such submissions should be addressed to the Secretary and should be received not later than 5:15 p.m. on February 26, 2010 (see earlier dates for filing requests to appear and for filing pre-hearing briefs and statements). All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000). Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of the investigation in the report it sends to the USTR.

As requested by the USTR, the Commission will publish a public version of the report, which will exclude portions of the report that the USTR has classified as well as any confidential business information.

Issued: January 12, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–903 Filed 1–19–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–463 (Final)]

Certain Oil Country Tubular Goods From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China of certain oil country tubular goods ("OCTG"), primarily provided for in subheadings 7304.29, 7305.20, and 7306.29 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

(Commerce) to be subsidized by the Government of China.[2 3]

Background

The Commission instituted this investigation effective April 8, 2009, following receipt of a petition filed with the Commission and Commerce by Maverick Tube Corporation, Houston, TX; United States Steel Corporation, Pittsburgh, PA; V&M Star LP, Houston, TX; V&M Tubular Corporation of America, Houston, TX; TMK IPSCO, Camanche, IA; Evraz Rocky Mountain Steel, Pueblo, CO; Wheatland Tube Corp., Wheatland, PA; and the United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of certain oil country tubular goods from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing 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 September 30, 2009 (74 FR 50242). The hearing was held in Washington, DC, on December 1, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 13, 2010. The views of the Commission are contained in USITC Publication 4124 (January 2010), entitled *Certain Oil Country Tubular Goods from China: Investigation No. 701–TA–463 (Final).*

By order of the Commission.

Issued: January 13, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–902 Filed 1–19–10; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioners Charlotte R. Lane and Irving A. Williamson determine that the domestic OCTG industry is materially injured by reason of imports of the subject merchandise from China.

[3] Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, Commissioner Deanna Tanner Okun, and Commissioner Dean A. Pinkert determine that they would not have found material injury but for the suspension of liquidation.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,401]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Qimonda 200 MM Facility Including On-Site Leased Workers from Tokyo Electron America and Nikon Precision, Inc., Qimonda North America Corporation, Qimonda Richmond, a Subsidiary of Qimonda AG and Aviza Technology, Inc., Sandston, Virginia.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 7, 2009, applicable to workers of Qimonda 200MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Excel Logistics, Xperts, Inc., KLA–Tencor Craftcorps, Inc., Colonial Webb and Novellus Systems, Inc., and Quimonda North America Corporation, Qimonda Richmond, A subsidiary of Qimonda AG, Sandston, Virginia. The notice was published in the **Federal Register** on August 26, 2009 (74 FR 43157).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of DRAM semiconductor wafers.

New information shows that workers leased from Aviza Technology, Inc. were employed on-site at the Sandston, Virginia location of Qimonda 200MM Facility. The Department has determined that these workers were sufficiently under the control of Qimonda 200MM Facility to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Aviza Technology, Inc. working on-site at the Sandston, Virginia location of the subject firm.

The amended notice applicable to TA–W–64,401 is hereby issued as follows:

All workers of Qimonda 200MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., Ebara Technologies, Inc., Air Products and Chemicals, Inc., PSI Repair Services, Excel Logistics, Xperts, Inc., KLA–Tencor Craftcorps, Inc., Colonial Webb and Novellus Systems, Inc., Quimonda North America Corporation, Qimonda Richmond, a subsidiary of Qimonda AG, and Aviza Technology, Inc., Sandston, Virginia who became totally or partially separated from employment on or after November 11, 2007 through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of December 2009.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–895 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,489; TA–W–64,489A; TA–W–64,489B]

Wyeth Pharmaceuticals, a Subsidiary of Wyeth, Currently Known as Pfizer, Rouses Point, NY; Wyeth Pharmaceuticals, a Subsidiary of Wyeth, Currently Known as Pfizer, Chazy, NY; Wyeth Pharmaceuticals, a Subsidiary of Wyeth, Currently Known as Pfizer, Plattsburgh, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), as amended, the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 24, 2009, applicable to workers of Wyeth Pharmaceuticals, a subsidiary of Wyeth, Rouses Point, New York. The notice will be published soon in the **Federal Register.**

At the request of the state agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of various pharmaceutical products such as Rapaume Liquid, Effexor, Premarin IV, Premarin, Prempro, Premarin Vaginal Cream, CEDL, and CEC.

New findings show that the Chazy, New York and Plattsburgh, New York locations of Pfizer also experienced an employment decline during the relevant period. Workers at the Chazy and Plattsburgh, New York locations are

engaged in activities related to the production of various pharmaceutical products directly supporting and sufficiently under the control of the Rouses Point, New York production facility of the subject firm.

Accordingly, the Department is amending the certification to cover workers at the Chazy, New York and Plattsburgh, New York locations of Pfizer.

The intent of the Department's certification is to include all workers of Pfizer who were adversely affected by a shift in plant production of various pharmaceutical products to Canada.

The amended notice applicable to TA–W–64,489 is hereby issued as follows:

All workers of Wyeth Pharmaceuticals, a subsidiary of Wyeth, currently known as Pfizer, Rouses Point, New York (TA–W–64,489, Wyeth Pharmaceuticals, a subsidiary of Wyeth Pharmaceuticals, a subsidiary of Wyeth, currently known as Pfizer, Chazy, New York (TA–W–64,489A), and Wyeth Pharmaceuticals, a subsidiary of Wyeth, currently known as Pfizer, Plattsburgh, New York (TA–W–64,489B), who became totally or partially separated from employment on or after November 19, 2007, through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–896 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,882]

Glaxosmithkline, Including On-Site Temporary and Leased Workers From Kelly Services, Kelly Scientific Resources, Atwork Personnel Services, Five Star Food Service Currently Known as GTS–Greater Tri City Services, Universal Services Company, Hodge Electrical Contractors, Pharmasys, Validation System Solutions, Tele-Optics and Dream Clean, Inc., Bristol, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Assistance on June 26, 2008, applicable to workers of Glaxosmithkline including on-site temporary and leased workers from Kelly Services, Kelly Scientific Resources, Atwork Personnel Services, Five Star Food Service currently known as GTS–Greater Tri City Services, Universal Services Company, Hodge Electrical Contractors, Pharmasys, Validation System Solutions, and Tele-Optics, Bristol, Tennessee. The notice was published in the **Federal Register** on July 15, 2008 (73 FR 40619).

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of penicillin-based antibiotics for humans and animals.

The company reports that on-site leased workers from Dream Clean, Inc. were employed on-site at the Bristol, Tennessee location of Glaxosmithkline. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Dream Clean, Inc. working on-site at the Bristol, Tennessee location of Glaxosmithkline.

The amended notice applicable to TA–W–62,882 is hereby issued as follows:

All workers of Glaxosmithkline including on-site temporary and leased workers from Kelly Services, Kelly Scientific Resources, Atwork Personnel Services, Five Star Food Service currently known as GTS–Great Tri City Services, Universal Services Company, Hodge Electrical Contractors, Pharmasys, Validation System Solutions, Tele-Optics and Dream Clean, Inc., Bristol, Tennessee who became totally or partially separated from employment on or after April 9, 2007, through June 26, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of December 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–894 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,520; TA–W–70,520A]

The Boeing Company Commercial Aircraft Group, Including On-Site Leased Workers From Comforce Corporation, Adecco, Multax, Inconen, CTS, Hi-Tec, Woods, Ciber, Kelly Services, Analysts International Corp, Comsys, Filter LLc, Excell, Entegee, Chipton-Ross, Ian Martin, Can-Tech, IT Services, IDEX Solutions (NW CAD), Media Logic, HL YOH, Volt, PDS, CDI Corp, Teksystems, Innovative Systems, Inc., and Murphy & Associates, Puget Sound, WA; The Boeing Company Commercial Aircraft Group Including On-Site Leased Workers From Comforce Corporation, Adecco, Multax, Inconen, CTS, Hi-Tec, Woods, Ciber, Kelly Services, Analysts International Corp, Comsys, Filter LLC, Excell, Entegee, Chipton-Ross, Ian Martin, Can-Tech, It Services, IDEX Solutions (NW CAD), Media Logic, HL YOH, Volt, PDS, CDI Corp, Teksystems, Innovative Systems, Inc., and Murphy & Associates Portland, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on October 19, 2009, applicable to workers of The Boeing Company, Commercial Aircraft Group, Puget Sound, Washington and The Boeing Company, Commercial Aircraft Group, Portland, Oregon. The notices were published in the **Federal Register** December 11, 2009 (74 FR pages 65794 and 65795).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of large commercial aircraft.

The company reports that on-site leased workers from Comforce Corporation, Adecco, Multax, Inconen, CTS, Hi-Tec, Woods, Ciber, Kelly Services, Analysts International Corp, Comsys, Filter LLC, Excell, Entegee, Chipton-Ross, Ian Martin, Can-Tech, IT Services, IDEX Solutions (NW CAD), Media Logic, HL YOH, Volt, PDS, CDI Corp, Teksystems, Innovative Systems, Inc., and Murphy & Associates were employed on-site at both the Puget Sound, Washington and Portland, Oregon locations of The Boeing

Company, Commercial Aircraft Group. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending the certification to include workers leased from Comforce Corporation, Adecco, Multax, Inconen, CTS, Hi-Tec, Woods, Ciber, Kelly Services, Analysts International Corp, Comsys, Filter LLC, Excell, Entegee, Chipton-Ross, Ian Martin, Can-Tech, IT Services, IDEX Solutions (NW CAD), Media Logic, HL YOH, Volt, PDS, CDI Corp, Teksystems, Innovative Systems, Inc., and Murphy & Associates working on-site at both the Puget Sound, Washington and Portland, Oregon locations of The Boeing Company, Commercial Aircraft Group.

The amended notice applicable to the TA–W–70,520 and TA–W 70,520A is hereby issued as follows:

All workers of The Boeing Company, Commercial Aircraft Group, including on-site leased workers from Comforce Corporation, Adecco, Multax, Inconen, CTS, Hi-Tec, Woods, Ciber, Kelly Services, Analysts International Corp, Comsys, Filter LLC, Excell, Entegee, Chipton-Ross, Ian Martin, Can-Tech, IT Services, IDEX Solutions (NW CAD), Media Logic, HL YOH, Volt, PDS, CDI Corp, Teksystems, Innovative Systems, Inc., and Murphy & Associates, Puget Sound, Washington (TA–W–70,520), and Portland, Oregon (TA–W–70,520A), who became totally or partially separated from employment on or after May 22, 2008, through October 19, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 8th day of January 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–899 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,447]

Applied Materials, Inc., Including On-Site Leased Workers From Adecco Employment Services, Aerotek, Inc., CDI IT Solutions (CDI Corporation), D&Z Microelectronics, Pentagon Technology, Proactive Business Solution, Inc., Technical Resources, SQA Services and NSTAR, Austin, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 30, 2009, applicable to workers of Applied Materials, Inc., including on-site leased workers from Adecco Employment Services, Aerotek, Inc., CDI IT Solutions, D&Z Microelectronics, Pentagon Technology, Proactive Business Solution, Inc., Technical Resources, SQA Services and NSTAR, Austin, Texas. The notice was published in the **Federal Register** on November 17, 2009 (74 FR 59253).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of semiconductor equipment.

Information shows that on-site leased workers from CDI IT Solutions had their wages reported under a separated unemployment insurance (UI) tax account for its parent firm, CDI Corporation.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in production of semiconductor equipment to Singapore.

The amended notice applicable to TA–W–71,447 is hereby issued as follows:

All workers of Applied Materials, Inc., including on-site leased workers from Adecco Employment Services, Aerotek, Inc., CDI IT Solutions (CDI Corporation), D&Z Microelectronics, Pentagon Technology, Proactive Business Solution, Inc., Technical Resources, SQA Services, and NSTAR, Austin, Texas, who became totally or partially separated from employment on or after June 25, 2008 through September 30, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 15th day of December 2009.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–900 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,903]

JP Morgan Chase and Company; JP Morgan Investment Banking, Global Corporate Financial Operations, New York, NY; Notice of Negative Determination on Reconsideration

By application dated October 12, 2009, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of JP Morgan Chase and Company, JP Morgan Investment Banking, Global Corporate Financial Operations, New York, New York. The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was signed on October 27, 2009, and published in the **Federal Register** on November 12, 2009 (74 FR 58315).

The investigation resulted in a negative determination based on the finding that workers' separations or threat of separations were not related to an increase in imports or shift/acquisition of business research and clerical support operations to/from a foreign country. The subject firm did not import services like or directly competitive with services provided by workers of the subject firm and did not shift provision of these services abroad.

In the request for reconsideration the petitioner alleged that workers worked for JP Morgan Chase and Company, Global Corporate Financial Operations (GCFO), Presentation Production Services (PPS). The petitioner further alleged that JP Morgan operates facilities in Mumbai and Bangalore and that JP Morgan shifted provision of services from the subject firm to India. Specifically, the petitioner alleged that the bankers of JP Morgan were instructed to bypass the PPS offices in the United States and send work directly to JP Morgan facilities abroad.

The Department contacted company officials of JP Morgan Chase to address the above allegations. The company officials confirmed that JP Morgan Chase has subsidiaries in India and Argentina which provide additional support services to bankers of JP Morgan Chase. The company officials further stated that bankers were not instructed to bypass PPS but utilize centers in Argentina and India as an option if the local service was not available. The officials confirmed that JP Morgan Chase did not shift provision of services from the subject firm to a foreign location.

The Department requested employment information for the foreign facilities of JP Morgan Chase that perform services like or directly competitive with services provided by workers of the subject firm. The data revealed that employment at these facilities declined in 2008 and 2009.

The investigation revealed that the reduction in business volume caused the subject firm's reorganization and that the layoffs at the subject facility was not related to increased imports of business research, clerical support operations or presentation production services and there was no shift of these services abroad during the period under investigation.

The petitioner further alleged that workers of the subject firm provided services to bankers of JP Morgan Chase, who in turn, provided services to external clients.

The company official verified that PPS is an internal service provider only and that the workers of the subject firm did not provide services directly to external clients and vendors.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of JP Morgan Chase and Company, JP Morgan Investment Banking, Global Corporate Financial Operation, New York, New York.

Signed at Washington, DC, this 7th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–893 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,326]

Ford Motor Company, Dearborn Truck Plant, Dearborn, MI; Notice of Negative Determination on Reconsideration

By application dated September 18, 2009, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Ford Motor Company, Dearborn Truck Plant, Dearborn, Michigan. The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was signed on September 29, 2009, and published in the **Federal Register** on October 20, 2009 (74 FR 53766).

The investigation resulted in a negative determination based on the finding that workers' separations or threat of separations were not related to an increase in imports of like or directly competitive products with Ford F Series pickups and Lincoln Mark LR sports-utility pickups and there was no shift/acquisition of production of Ford F Series pickups and Lincoln Mark LR sports-utility pickups to/from a foreign country.

The petitioners alleged that production at the subject facility was negatively impacted by increased imports of directly competitive products. The petition further states that "any brand of new vehicle available for purchase" should be considered like or directly competitive with the products manufactured by the subject firm, thus imports of all vehicles should be considered in the investigation.

In order to establish import impact, the Department solicits relevant information from the subject firm, customers of the subject firm and analyzes available United States aggregate data regarding imports of articles, including articles like or directly competitive with the products manufactured by the subject firm for the relevant period (one year prior to the date of the petition). Like or directly competitive means that like articles are those which are substantially identical in inherent or intrinsic characteristics; and directly competitive articles are those which, although not substantial identical, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefore).

In case at hand, the like articles are specifically Ford F Series pickups and Lincoln Mark LT sports-utility pickups, while directly competitive products include other equivalent for commercial purposes vehicles, which are adapted to the same use and can be classified under the same category of vehicles. Therefore, any vehicles that can be categorized under the full-sized pickups and sport-utility pickups are considered to be directly competitive with the vehicles manufactured by the subject firm. The analysis of the data revealed that U.S. aggregate imports of full-sized pickups and sport utility pickups declined absolutely and relatively in comparison with sales of U.S.-manufactured full-sized pickups and sport utility pickups from 2007 to 2008 and from January through July 2009 over the corresponding 2008 period.

To support the allegation, the petitioner attached several newspaper articles, alleging that Ford manufactures pickups in Australia, South Africa and Thailand and is increasing its production capacity of Fiesta in Mexico and Canada.

The Department contacted company officials of Ford Motor Company to address the above allegations. The company officials stated that Ford does not produce like or directly competitive products with Ford F Series pickups and Lincoln Mark LT sports-utility pickups in Australia, South Africa and Thailand. The official also stated that vehicles manufactured in Canada are also not like or directly competitive with Ford F Series and Lincoln Mark LT pickups. Moreover, the official stated that Ford Motor Company does not manufacture pickups in Mexico and Canada. The company official confirmed that Ford Motor Company did not shift production of Ford F Series and Lincoln Mark LT pickups from Dearborn, Michigan abroad during the relevant period.

The investigation revealed that the reduction in market share resulted in over-capacity at Ford facilities, and that the layoffs at the subject facility were not related to increased imports of like or directly competitive vehicles with Ford F Series and Lincoln Mark LT pickups and there was no shift of production of these vehicles abroad during the period under investigation.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Ford Motor Company, Dearborn Truck Plant, Dearborn, Michigan.

Signed at Washington, DC, this 8th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–897 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,516]

Lamb Assembly and Test, LLC, Subsidiary of Mag Industrial Automation Systems, Machesney Park, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated December 1, 2009, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on October 22, 2009 and was published in the **Federal Register** on December 11, 2009 (74 FR 65796).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination, based on the finding that imports of automation equipment and machine tools did not contribute to worker separations at the subject facility and there was no shift in production from the subject firm to foreign country during the period under investigation. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's declining customers. The survey revealed no imports of automation equipment and machine tools by declining customers during the relevant period. The subject firm did not import automation equipment and machine tools nor shift production to a foreign country during the relevant period.

The petitioner stated that workers of the subject firm supplied transmission assembly automation equipment to companies which have been recently certified eligible for TAA. The petitioner provided a list of customers and alleged that the workers of the subject firm should be eligible for TAA as secondary impacted workers under Section 222(c).

For the Department to issue a secondary worker certification under Section 222(c), to workers of a secondary upstream supplier, the subject firm must produce for a TAA-certified firm a component part of the article that was the basis for the customers' certification and the certified firm received certification of eligibility for TAA as a primary impacted firm.

The Department has reviewed the list of companies provided by the petitioners. The alleged customers manufacture aluminum transmissions, cases, parts and automobile engines. The subject firm does not act as an upstream supplier, because automation equipment and machine tools do not form component parts of aluminum transmissions, cases, parts and automobile engines. Furthermore, the customers to which the subject firm allegedly supplied articles were not certified as primary firms but were certified for TAA on the basis of a secondary impact. Thus the subject firm workers are not eligible under secondary impact.

The petitioner also stated that workers of Lamb Technicon, a division of Unova, Warren, Michigan and Lake Orion, Michigan were previously certified eligible for TAA. The petitioner appears to allege that because the sister companies of the subject firm were certified eligible for TAA, the workers of the subject firm should be also granted a TAA certification.

The workers of the above mentioned companies were certified eligible for TAA under petition numbers TA–W–40,267 and TA–W–40,267A in July 2002.

When assessing eligibility for TAA, the Department exclusively considers events during the relevant period (from one year prior to the date of the petition). Therefore, events occurring in 2002 are outside of the relevant period and are not considered in this investigation.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 7th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–898 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before February 19, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2009–059–C.

Petitioner: McClane Canyon Mining, P.O. Box 98, Loma, Colorado 81524.

Mine: McClane Canyon Mine, MSHA I.D. No. 05–03013, located in Garfield County, Colorado.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance in lieu of using blow-off dust covers for nozzles of a deluge-type water spray system. The petitioner states that: (A) A person trained in testing procedures specific to the deluge-type water spray fire suppression systems utilized at each belt drive will once each week: (1) Conduct a visual examination of each of the deluge-type water spray fire suppression systems; (2) conduct a functional test of the deluge-type water spray fire suppression systems by actuating the system and observing its performance; and (3) record the results of the examination and functional test in a book maintained on the surface for that purpose. The record will be made available to the authorized representative of the Secretary and retained at the mine for one year; (B) Any malfunction or clogged nozzle detected as a result of the weekly examination or functional tests will be corrected immediately; and (C) the procedure used to perform the functional test will be posted at or near each belt drive which utilizes a deluge-type water spray fire suppression system. The petitioner asserts that the proposed alternative method will provide a measure of protection equal to or greater than that of the standard.

Docket Number: M–2009–060–C.

Petitioner: Brooks Run Mining Company, LLC, 25 Little Birch Road, Sutton, West Virginia 26601.

Mine: Poplar Ridge Deep Mine, MSHA I.D. No. 46–08885 and Saylor A Mine, MSHA I.D. No. 46–09126, located in Webster County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance in lieu of using blow-off dust covers for nozzles of a deluge-type water spray system. The petitioner proposes to continue its weekly inspection and functional tests for the complete deluge type water spray system. The petitioner states that: (1) Weekly inspection and functional tests are conducted of its complete deluge-type water spray system; (2) in view of the frequent inspections and functional tests of the system, the dust covers are not necessary because the nozzles can be maintained in a unclogged condition through weekly use; and (3) it is burdensome and exposes persons to undue hazards of falling from heights to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners employed by said standard.

Docket Number: M–2009–061–C.

Petitioner: Owlco Energy, LLC, P.O. Box 976, Middlesboro, Kentucky 40965.

Mine: Mine No. 1, MSHA I.D. No. 15–18870, located in Letcher County, Kentucky.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements)

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables supplying power to permissible pumps to be increased. The petitioner states that: (1) This petition will apply only to trailing cables supplying single phase, 240-volt power for permissible pumps; (2) the maximum length of 240-volt power for permissible pumps will be 3,000 feet; (3) the 240-volt power for permissible pump trailing cables will be no smaller than #10 American Wire Gauge (AWG); (4) the company currently utilizes a P–20CE, 2G–3018 MSHA approved pump. This pump is approved with 500 feet of #14/5 AWG trailing cable with a circuit breaker set at 50 amps. Owlco Energy, LLC proposes the alternative that will provide no less than the same protection by protecting this circuit with a 30 amp circuit breaker. The petitioner estimates that this setting would be satisfactory and be approximately 70–75 percent of the available fault current; (5) the outside diameter (OD) of the #10/3 AWG cable is within 0.01 inch(s) of the originally approved #14/5 AWG cable in the permissible XP enclosure (XP–2181); (6) the mines current pump circuits exceeding the approved lengths of trailing cables are attached with their respective locations in the mine; (7) all future pump installations with trailing cables installed that are longer than the approved lengths will be maintained as shown in items 1–5. These pumps will be shown on the mine electrical map and training will be provided to all mine employees about his proper care and maintenance of these pumps; and (8) within sixty (60) days after this petition is granted, the petitioner will submit proposed revisions for their

approved Part 48 training plans to the District Manager for the area in which the mine is located. The training will include the following: (a) Training in mining methods and operating procedures that will protect the cable against damage; (b) training in proper procedures for examining the trailing cables to ensure the cables are in safe operating condition; (c) training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cable(s); and (d) training in how to verify the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner further states that the procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners at Owlco Energy, LLC provided by the existing standard.

Docket Number: M–2009–062–C.

Petitioner: American Energy Corporation, 43521 Mayhugh Hill Road, Twp. Hwy. 88, Beallsville, Ohio 43716.

Mine: Century Mine, MSHA I.D. No. 33–01070, located in Monroe County, Ohio.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables for supplying power to permissible equipment used in continuous mining sections to be increased. The petitioner states that: (1) This petition will apply only to trailing cables supplying three-phase, 480-volt A.C. power to roof bolters; (2) the maximum length of the 480-volt A.C. trailing cables supplying power to roof bolters will be 850 feet. The 480-volt trailing cables for roof bolters will no be smaller than #2 American Wire Gauge (AWG); (3) all circuit breakers used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 700 amperes. The trip setting of these circuit breakers will be sealed or locked, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breakers as being suitable for protecting No. 2 AWG cables. The label will be maintained legible; (4) replacement instantaneous trip units, used to protect No. 2 AWG trailing cables, will be calibrated to trip at 700 amperes and this setting will be sealed or locked; (5) all components that provide short-circuit protection will have a sufficient interruption rating in accordance with the maximum calculated fault currents available; (6) during each production day, persons designated by the mine operator will visually examine the trailing cables to ensure that the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do not have seals or locks removed and that they do not exceed the stipulated settings; (7) any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced; (8) each splice or repair in the trailing cables will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The splice or repair will comply with 30 CFR §§ 75.603 and 75.604; (9) permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed short-circuit protective device. These labels will warn miners not to change or alter these short-circuit settings; (10) the alternative method will not be implemented until designated miners have been trained to examine the integrity of seals or locks, verify the short-circuit settings, and properly examine trailing cables for defects and damage; and (11) within 60 days after this petition is granted, proposed revisions for their approved 30 CFR Part 48 training plans will be submitted to the District Manager for the area in which the mine is located. The training plan will include: (a) Training in the mining methods and operating procedures for protecting the trailing cables against damage; (b) training in proper procedures for examining the trailing cables to ensure the cables are in safe operating condition; (c) training in hazards of setting short-circuit interrupting device(s) too high to adequately protect the trailing cable(s); and (d) training in how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner further states that the procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded to all miners at the Century Mine as would be provided by the existing standard.

Docket Number: M–2009–063–C.

Petitioner: Prairie State Generating Company, LLC, 4274 County Highway 12, Marissa, Illinois 62257.

Mine: Lively Grove Mine, MSHA I.D. No. 11–03193, located in Washington County, Illinois.

Regulation Affected: 30 CFR 75.1909(b)(6) (Non-permissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the Getman Road Builder, Serial Number 460–002 to be operated as it was originally designed, without front brakes. The petitioner states that: (1) The rule does not address equipment with more than four (4) wheels, specifically the Getman, Model RDG–1504S Road Builder, with six (6) wheels; (2) the machine has dual brake systems on the four (4) rear wheels, and is designed to prevent loss of braking due to a single component failure. The petitioner proposes to: (1) Limit the speed of the machine to 10 miles per hour (MPH) by permanently blocking out any gear that would provide higher speed or use transmission and differential ratios that would limit the maximum speed to 10 MPH; (2) provide training for the operators to recognize appropriate speeds for different road conditions and slopes; and (3) provide training for the operators to lower the grader blade to provide additional stopping capability. The petitioner asserts that the safety of the miners will not be compromised if the machines are operated as described in this petition.

Dated: January 14, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–936 Filed 1–19–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before February 19, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2009–049–C.

Petitioner: INR–WV Operating, LLC, 100 Market Street, Suite A, Man, West Virginia 25635.

Mine: North Fork Coal Refuse Disposal Facility—WV04–02140–01, MSHA I.D. No. 46–02140, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.214(a) (Refuse piles; general).

Modification Request: The petitioner requests a modification of the existing standard to permit existing mine openings to be covered during construction of the North Fork Coal Refuse Disposal Facility. The petitioner states that: (1) There are 18 mine openings within the limits of the North Fork Coal Refuse Facility; (2) the openings are associated with the Buffalo Mining Company's No. 8-C Mine in the Upper Winifrede coal seam and the Tri-Energy Resources, Inc., No. 3 Mine and Hart-Hat Coal Company's No. 3 Mine in the Buffalo Creek seam; (3) all of the mines are abandoned; and (4) only a few of the openings are currently exposed. The petitioner further states that: (1) All mine openings will be exposed and sealed and underdrains installed at the lowest elevation opening; (2) the mine openings will be backfilled with earthen material that will extend approximately 25 feet into the mine and at least 4 feet in all directions beyond the limits of the opening; (3) any exposed coal seam along the mine bench will also be covered with soil at least 4 feet above the seam; (4) one 12-inch, SDR–11 high density polyethylene pipe will be placed at the mine opening with the lowest elevation; (5) a rock underdrain, consisting of 3-inch to 9-inch diameter rock cobbles wrapped with filter fabric will be installed to convey potential flow from the pipe to the main rock underdrain or to a groin ditch, and (6) since the existing mines are abandoned, the proposed plan will provide the same measure of protection for the miners as given to them by the standard.

Docket Number: M–2009–050–C.

Petitioner: Wolf Run Mining Company, 300 Corporate Centre Drive, Scott Depot, West Virginia 25560.

Mine: Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests to be permitted to continue mining through the vertical boreholes and horizontal legs and branches (laterals) of CBM wells that penetrate the coalbed it is mining. The petitioner states that one of the following method(s) will be implemented to protect against hazards from such wells to the miners in the mine while mining through CBM wells with horizontal branches in coal seams: (1) The process outlined will be executed under the direction of a certified and qualified person. Only those personnel directly associated with the mine-through process will be present in the heading which is to encounter the borehole during the initial mine intersection of such borehole; and (2) upon approaching a fifty-foot (50′) radius from the nearest portion of an in-seam borehole through the process of through-mining an in-seam borehole—initial mine-through and/or subsequent through-mining of another segment of the same borehole (excluding subsequent mining of a continuous section of the same borehole). The petitioner proposes to: (1) Install vacuum pump(s) or a compressor at the wellhead, capable of maintaining a vacuum, which is lower than the mine operating pressure in the working faces, to the farthest reaches of the associated boreholes; (2) equip the well with continuous flow, pressure and oxygen monitoring equipment. A flame arresting device will be installed on the surface equipment of the well as close as practicable to the outlet connection of the vertical wellhead component. The producing well system will be equipped with an automatic flare stack designed to fall open to the atmosphere in case of compressor shutdown, high pressure, or high oxygen content; (3) configure telemetry equipment to provide automatic warning to both the mine operator and well operator should the vacuum system shut down or lose vacuum force. The warning system will be capable of notification by telephone and/or fax to both organizations simultaneously. Warning alarms will be monitored twenty-four (24) hours per day, seven (7) days per week. Personnel for both organizations will be trained and simulated drills will be performed to ensure emergency preparedness. Once mining is within twenty-four (24) hours of intersecting the borehole, qualified personnel will be stationed continuously at the well site until the mine-through has been achieved. If communications become unavailable or inadequate during such period, mining will cease until suitable communications are reestablished; (4) ensure that the well liquid level is maintained below the lower coal seam junction; (5) notify MSHA Morgantown District Manager, MSHA Bridgeport Field Office, and appropriate state agencies at least twenty-four (24) hours prior to the shift on which the mine-through is projected to occur; (6)

position firefighting equipment, including two 20 pound fire extinguishers, 240 pounds of rock dust, and a fire hose long enough to reach the face having the capability of delivering a minimum of 50 gallons per minute of water at a nozzle pressure of 50 pounds per square inch; (7) assure that no less than the volume of air prescribed in the approved face ventilation plan is delivered to the face of the heading which will encounter the borehole; (8) calibrate the onboard methane monitor on the applicable continuous miner at the end of the last production shift prior to the projected mine-through; (9) reduce the interval for methane readings from 20 minutes to 10 minutes as mining progresses through the mine-through procedure; (10) de-energize face equipment and inspect the area as soon as the borehole is breached, including methane readings at the face, behind the line curtain, and in the immediate return. If mine air flows into the lateral as expected, or if gas inflow is acceptably low, proceed with mining only to the extent that a clean face has been prepared for roof-bolting and borehole plugging. If gas inflow from the well is unacceptably high (1.0% methane by volume, or higher, as measured at least twelve inches from the roof, rib, face, and floor), take appropriate action on the section and immediately, from under supported roof, install a cup type packer device with a minimum of 20 feet of pipe. Load the hole with water to ensure inflow is controlled. Monitor liquid level in case of leakage and refill liquid as required; and (11) take a methane reading at least once every 10 minutes, using a properly calibrated hand-held methane detector, while bolting and cleaning up (scooping) the face for the sealing operation, and heavily rock dust the affected face and entry. The petitioner states that MSHA personnel may interrupt or halt the mining-through operation when it is necessary for the safety of the miners. Persons may review a complete list of procedures for this petition at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection at the Sentinel Mine as would be afforded by the existing standard.

Docket Number: M–2009–051–C.

Petitioner: Rockhouse Creek Development, LLC, 210 Larry Joe Harless Drive, P.O. Box 1389, Gilbert, West Virginia 25621.

Mine: No. 3–A Mine, MSHA I.D. No. 46–09279, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1101-1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to allow Rockhouse Creek Development (RCD) to continue its weekly inspections and functional testing of its complete deluge-type water spray system, and to remove blow-off dust covers from the nozzles. The petitioner states that: (1) Sections 75.1101–1 through 75.1101–4 set forth requirements regarding deluge-type water spray systems and among those requirements there is no mandate to inspect and functional-test such systems. Nevertheless, RCD conducts a weekly inspection and functional-tests of its complete deluge-type spray system. The system consists of an average of thirty (30) sprays along each of approximately ten (10) primary belt-conveyor drives and an average of sixty (60) sprays along each of eight (8) secondary drives; and (2) Currently RCD provides blow-off dust covers for each nozzle as required in 75.1101–1. In view of the frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use. Further, it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the proposed alternative method would at all times guarantee no less than the same measure of protection afforded the miners employed at Rockhouse Creek Development by the existing standard.

Docket Number: M–2009–052–C.

Petitioner: ICG Beckley, LLC, 300 Corporate Centre Drive, Scott Depot, West Virginia 25560.

Mine: Beckley Pocahontas Mine, MSHA I.D. No. 46–05252, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to be permitted to continue mining through the vertical boreholes and horizontal legs and branches (laterals) of coalbed methane (CBM) wells that penetrate the coalbed it is mining. *Intact Coal Bed Methane Borehole (Surface Articulated/Drilled) (CBM) Mine Through Plans.* One of the following method(s) will be implemented to protect against hazards from such wells to the miners in the mine while mining through CBM wells with horizontal branches in coal seams: *Option A: Water plug under pressure:* (1) The CBM well will be infused with water prior to the underground mining operations breaching the CBM well. A positive pressure will be maintained on the CBM well in an effort to infuse the coal around the CBM hole with water, as well; (2) the CBM well system will be equipped with a flame arrestor and sufficient lightning protection; (3) mining will be completed in accordance with the underground mine-through procedures as listed in the plan; (4) legs/laterals that are opened after mining will be evaluated to determine the quantity of methane being produced in order to determine if the lateral will have to be plugged or simply ventilated; (5) if a plug is required, it will be installed in accordance with the contingency plans as listed; (6) typically, open legs/laterals will be breached multiple times during mining. The segmented hole(s) will be ventilated or filled with water each time it is breached. The larger or outby portions of the borehole/degas hole will be pressurized with water. *Option B: Maintain Negative (Vacuum) Pressure on Degas Hole:* (1) The CBM well will have a vacuum pump or compressor system setup at the wellhead that will have the capability of maintaining a sufficient vacuum pressure on the entire CBM borehole and provide a pressure that is lower than the mine operating pressure at any intersection point; (2) the CBM well will be set up with a 24 hour monitoring system that will immediately notify the mine operator of any reductions or losses in vacuum pressure; (3) the well system will be equipped with a flame arrestor and sufficient lightning protection. An automatic vent and oxygen sensor system will be installed and maintained such that when oxygen from the underground mine/pipe system is detected, the vent will open and vent the methane to the atmosphere; (4) the CBM gas well on the surface will be pressurized and a negative (vacuum) pressure will be maintained on the legs/laterals of the system; (5) mining will be completed in accordance with the underground mining procedures listed in this plan; (6) when a degas hole is intercepted, mine air will be pulled into the open borehole and will ventilate the outby portion of the degas borehole immediately; (7) legs/laterals on the inby portion of the hole that are not being pulled to the surface will be evaluated to determine the quantity of methane being produced in order to determine if the lateral will have to be plugged or simply ventilate; (8) if a plug is required it will be installed in accordance with the contingency plan as listed; (9) typically, open legs/laterals will be breached multiple times during

mining. The segmented hole(s) will be ventilated by mine air or by the pressure from the vacuum pump on the surface; (10) short segments of CBM legs/laterals (100 feet or less) will be ventilated and air forced through the segment to sweep away any methane in that segment. After the hole has been ventilated, it will be allowed to remain open and be ventilated with the remainder of the mine. *Option C: Plugging the Coalbed Methane Well (CBM) from the Surface:* (1) Procedures for cleaning out and preparing the CBM well for plugging: (a) Make a diligent and reasonable effort to remove all metal casing from the CBM/well borehole unless it has been grouted in place. Metal casing that has been grouted in place will be perforated or ripped at intervals to allow for any expanding cement or slurry mixtures to infiltrate the annulus between the casing and the borehole wall; (b) a diligent and reasonable effort will be made to reenter the CBM/well borehole to the original total measured distance. If the total measured distance cannot be reached, the borehole will be reentered to the maximum extent practicable. Similarly, any known laterals will be reentered to the maximum extent practicable; (c) a directional deviation survey completed during the drilling of the borehole/well or during the cleanout will be utilized to determine the relative location of the coal seam and of the location of the boreholes within the coal seam; (2) Plugging Coalbed Methane (CBM) wells: (a) Once the borehole has been reentered to the maximum extent practicable, expanding grout will be pumped into the CBM. Where laterals are encountered, a diligent and reasonable effort will be made to reenter each known lateral and grout to the maximum extent practicable. Upon completion of grouting each lateral, the inby portion of the main trunk line of the CBM will be filled with expanding grout to the maximum extent practicable, and will be repeated until the CBM is grouted/filled to the surface; (b) the MSHA District Manager will determine what alternate materials other than grout are suitable for use in sealing the borehole; and (c) a small quantity of steel shavings or magnetic material will be installed at the top of the grouted CBM borehole and utilized as a monument locating the site; (3) If the CBM well is located such that it may be used as a bleeder borehole, the grout mixture quantity will be limited to fill only the coal seam drill hole void. In all other circumstances, the CBM will be filled with grout to at least fifty feet above the upper most underground minable coal seam. The petitioner states that: (1) The operator will notify the District Manager or his designee prior to mining within 300 feet of any well and when a specific plan is designated for mining through each well. The District Manager or his designee, the representative of miners, and the appropriate State agency will receive reasonable notification prior to the mining-through operation in order to have an opportunity to have a representative present; (2) the mining-through operation will be under the direct supervision of a certified person in charge. Personnel will not be permitted in the area of the mining-through operation except those actually engaged in the operation, company personnel, a representative of the miners, the MSHA representative(s) and the representative(s) from the appropriate State agency; (3) underground procedures for mining through a degas borehole will include firefighting equipment, fire extinguishers, rock dust and sufficient fire hose to reach the working face to be available near the working place where the cut-through will take place. The surrounding area within 20 feet of the cut-through area will be heavily rock dusted immediately prior to the cut-through. Adequate roof support and ventilation materials will be available near the working place where the cut-through will take place. Ventilation quantities will be maintained at the working face throughout the mine-through operation. Equipment will be in compliance with permissibility requirements and compliance will be verified on the shift immediately prior to the cut-through. Persons may review a complete description of the petitioner's procedures for mining through CBM wells at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection at the Beckley Pocahontas Mine as would be afforded by the existing standard.

Docket Number: M–2009–053–C.

Petitioner: ICG Beckley, LLC, 2221 Old Eccles Road, P.O. Box 49, Eccles, West Virginia 25836.

Mine: Beckley Pocahontas Mine, MSHA I.D. No. 46–05252, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1909(b)(6) (Non-permissible diesel-powered equipment; design and performance requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the Getman Roadbuilder, Serial Number 460–001 to be operated as it was originally designed, without front brakes. The petitioner states that: (1) The rule does not address equipment with more than four (4) wheels, specifically the Getman Roadbuilder, Model RDG–1504S, with six (6) wheels; (2) the machine has dual brake systems on the four (4) rear wheels, and is designed to prevent loss of braking due to a single component failure; (3) seventy-four percent (74%) of the machines total weight is over the four (4) rear wheels; and (4) with the weight distribution, brakes on the rear of the machine are sufficient to safely stop the machine. The petitioner further states that: (1) Training will be provided to the grader operators to lower the moldboard to provide additional stopping capability in emergency situations; and (2) training will be provided to the grader operators to recognize the appropriate speeds to use on different roadway conditions, and to limit the maximum speed to 10 miles per hour. The petitioner asserts that the proposed alternative method will provide the same degree/level of safety as the existing regulation.

Docket Number: M–2009–054–C.

Petitioner: Pinnacle Mining Company, LLC, P.O. Box 338, Pineville, West Virginia 24874.

Mine: Pinnacle Mine, MSHA I.D. No. 46–01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.507–1 (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit 2,400-volt or 4,160-volt alternating current submersible pump(s) to be installed and operated in return and/or bleeder entries and sealed areas in the Pinnacle Mine. The petitioner states that the three phase 2,400-volt or 4,160-volt alternating current electric power circuit(s) for the pump(s) will be designed and installed to: (a) contain either a direct or a derived neutral, which will be grounded through a suitable resistor at the source transformer of power center. A grounding circuit originating at the grounded side of the grounding resistor will extend along with the power conductors and serve as the grounding conductor for the frame of the pump(s) and all associated electric equipment that may be supplied power from the circuit(s). The borehole casing will be bonded to the system grounding medium; and (b) contain a grounding resistor that limits the ground-fault current to not more than 6.5 amperes.

The grounding resistor must be rated for the maximum fault current available and must be insulated from ground for a voltage equal to the phase-to-phase voltage of the system. The petitioner asserts that the proposed alternative method will provide an acceptable alternative and provide at least the same degree of safety as the existing standard.

Docket Number: M–2009–055–C.

Petitioner: Prairie State Generating Company, LLC, 4274 County Highway 12, Marissa, Illinois 62257.

Mine: Lively Grove Mine, MSHA I.D. No. 11–03193, located in Washington County, Illinois.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit the trailing cables to be increased to the maximum length of 950 feet for the 995 volt three-phase alternating current continuous mining machines and the 480-volt to 995 volt three-phase alternating current roof-bolting machines. The petitioner states that: (1) The maximum length of the trailing cables supplying power to three-phase 995 continuous miners will be 950 feet. The maximum length of the trailing cables supplying power to three-phase 480-volt or 995-volt roof bolting machines will be 950 feet; (2) the trailing cables for the 995-volt continuous mining machines will not be smaller than No. 2 American Wire Gauge (AWG), SHD–GC. The trailing cables for the 480-volt or 995-volt roof bolting machines will not be smaller than No. 2 AWG, SHD–GC; (3) all circuit breakers used to protect the No. 2 AWG trailing cables exceeding 850 feet in length will have instantaneous trip units calibrated to trip at 1,500 amperes. The trip setting will be sealed so that the setting cannot be changed, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breakers as being suitable for protecting No. 2 AWG cables. The label will be maintained legible. Replacement instantaneous trip units used to protect No. 2 AWG trailing cables will be calibrated to trip at 1,500 amperes and the setting will be sealed or locked for trailing cables exceeding 850 feet in length; (4) all circuit breakers used to protect No. 2 AWG trailing cables exceeding 700 feet in length and less than 850 feet in length, will have instantaneous trip units calibrated to trip at 800 amperes. The trip setting will be sealed to that the setting cannot be changed, and will have permanent, legible labels. Each label will identify the circuit breakers as being suitable for protecting No. 2 AWG cables. The label will be maintained legible. Replacement instantaneous trip units used to protect No. 2 AWG trailing cables will be calibrated to trip at 800 amperes and this setting will be sealed or locked for trailing cables exceeding 700 feet in length and less than 850 feet in length; (5) all components that provide short-circuit protection will have a sufficient interruption rating in accordance with the maximum calculated fault currents available. Short-circuit current setting must not exceed 70 percent of the minimum available current; (6) during each production day, persons designated by the mine operator will visually examine the trailing cables to ensure that the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do not have seals or locks removed and that they do not exceed the settings stipulated in items 5 and 6; (7) permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed short-circuit protective device; (8) any trailing cable that is not in safe operating condition will be removed from service immediately and repaired or replaced; (9) splices and repairs in trailing cables will be made in accordance with the instructions of the splice or repair manufacturer and 30 CFR 75.603 and 30 CFR 75.604; (10) all miners who have been designated to examine the integrity of seals, verify the short-circuit settings, and examine trailing cables for defects will receive part 48 training in the following: (a) The mining methods and operating procedures that will protect the trailing cables against damage; (b) the proper procedures for examining the trailing cables to ensure that they are in safe condition; (c) the hazards if setting the short-circuit interrupting device(s) too high to adequately protect the trailing cables; and (d) how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2009–056–C.

Petitioner: Prairie State Generating Company, LLC, County Highway12, Marissa, Illinois 62257.

Mine: Lively Grove Mine, MSHA I.D. No. 11–03193, located in Washington County, Illinois.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 2,400-volt continuous miners in the Lively Grove Mine. The petitioner states that: (1) The nominal voltage of power circuits will not exceed 2,400 volts; (2) the nominal voltage of the control circuits will not exceed 120 volts; (3) the ground-fault current will be limited by a neutral grounding resistor to not more than 0.5 ampere; (4) high-voltage circuits will be protected against short-circuits, overload, ground-faults, and undervoltage by a circuit interrupting device of adequate interrupting capacity; (5) the high-voltage cable for the 2,400-volt continuous miner circuit will be provided with instantaneous ground-fault protection set at not more than 0.125 ampere; (6) the neutral grounding resistor will be provided with backup ground-fault protection that will de-energize the primary of the transformer if a ground fault occurs with the neutral grounding resistor open; (7) each ground-fault current device will be provided with a test circuit that will inject a current of 50 percent or less of the current rating of the grounding resistor and cause each corresponding circuit-interrupting device to open. The test circuit will not subject the equipment to an actual phase-to-ground-fault condition. The petitioner further states that within 60-days after the Proposed Decision and Order become final, the petitioner will submit provisions for its approved part 48 training plan to the District Manger. The proposed revisions will include, but not limited to, task training, hazard training, and specialized training for qualified persons under 30 CFR 75.153, and annual refresher training. In addition, the following will be adopted: (a) Safety precautions for the handling and use of high-voltage trailing cables, for all mines assigned to work in the area of the high-voltage trailing cable; and (b) specialized training for qualified electricians that will be required to repair, maintain and/or trouble-shoot the high-voltage trailing cable or equipment. This training will focus on the requirements of this modification. Persons may review a complete description of the petitioner's proposed alternative method at the MSHA address listed in this notice. The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2009–057–C.

Petitioner: Prairie State Generating Company, LLC, 4274 County Highway 12, Marissa, Illinois 62257.

Mine: Lively Grove Mine, MSHA I.D. No. 11–03193, located in Washington County, Illinois.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of plugging and mining through oil and gas wells. The petitioner states that: (1) Lively Grove Mine will be mining the Herrin #6 coal and will experience mining around or through oil and gas wells; (2) copies of the plugging affidavits have been acquired from the Illinois State Geological Survey in the reserve area; and (3) before the well is approached, a drawing will be submitted to the District Office for approval to either mine around the well or through the well if necessary. The petitioner also states that the following procedures will be utilized when plugging oil and gas wells: (1) *Cleaning out and preparing oil and gas wells:* (i) A diligent effort will be made to clean the borehole to the original total depth. If this depth cannot be reached, the borehole will be cleaned out to a depth which would permit the placement of at least 200 feet of expanding cement below the base of the lowest minable coalbed; (ii) when clearing the borehole, a diligent effort will be made to remove all the casing in the borehole. If it is not possible to remove all casing, the casing which remains will be perforated or ripped at intervals spaced close enough to permit expanding cement slurry to infiltrate the annulus between the casing and the borehole wall for distance of at least 200 feet below the base of the lowest minable coalbed; (iii) if the cleaned out borehole produces gas, a mechanical bridge plug will be place in the borehole in a competent stratum at least 200 feet below the base of the lowest minable coalbed, but above the top of the uppermost hydrocarbon producing stratum. If it is not possible to set a mechanical bridge plug, a substantial brush plug may be used in place of the mechanical bridge plug; (iv) a suite of logs will be made consisting of a caliper survey directional deviation survey, and log(s) suitable for determining the top and bottom of the lowest minable coalbed and potential hydrocarbon producing strata and the location for the bridge plug. An electric well log to determine hole diameter will be conducted to accurately predict the quantity of cement required to plug the hole from 200 feet below the base of the lowest minable coal seam to the surface; (v) if the uppermost hydrocarbon-producing stratum is within 200 feet of the base of the lowest minable coalbed, properly placed mechanical bridge plugs or a suitable brush plug described in subparagraph (a)(3) will be used to isolate the hydrocarbon producing stratum from the expanding cement plug. Nevertheless, a minimum of 200 feet of expanding cement will be place below the lowest minable coalbed; and (vi) the wellbore will be completely filled and circulated with a gel that inhibits any flow of gas, supports the walls of the borehole, and increases the density of the expanding cement. This gel will be pumped through an open-end tubing run to a point approximately 20 feet above the bottom of the cleaned out area of the borehole bridge plug. (2) *Plugging oil and gas wells to the surface.* Procedures to be utilized when plugging gas or oil wells to the surface are as follows: (i) A cement plug will be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and fill the borehole to the surface. As an alternative, the cement slurry may be pumped down the tubing so that the borehole is filled with Portland cement or a Portland cement-fly ash mixture from a point approximately 100 feet above the top of the lowest minable coalbed to the surface with an expanding cement plug extending from at least 200 feet below the lowest minable coalbed to the bottom of the Portland cement. There will be at least 200 feet of expanding cement below the base of the lowest minable coalbed, and (ii) a surface casing, small quantity of steel turnings, or other small magnetic particles, will be embedded in the top of the cement near the surface to serve as a permanent magnetic monument of the borehole. As an alternative, a steel rod may be driven into the ground next to the borehole. (3) *Plugging oil or gas wells using the vent pipe method.* Procedures to be utilized when using the vent pipe method for plugging gas or oil wells are as follows: (i) A 4½ inch or larger vent pipe will be run into the wellbore to a depth of 100 feet below the lowest minable coalbed and welded to a smaller diameter pile, if desired, which will extend to a point approximately 20 feet above the bottom of the cleaned out area of the borehole or bridge plug; (ii) a cement plug will be set in the wellbore by pumping an expanding cement slurry, Portland cement, or a Portland cement-fly ash mixture down the tubing to displace gel so that the borehole is filled with cement. The borehole and the vent pipe will be filled with expanding cement for minimum of 200 feet below the base of the lowest minable coalbed. The top of the expanding cement will extend to a point approximately 100 feet above the top of the lowest minable coalbed; (iii) all fluid will evacuated from the vent pipe to facilitate testing for gases. During the evacuation of fluid, the expanding cement will not be disturbed; and (vi) the top of the vent pipe will be protected to prevent liquids or solids from entering the wellbore, but permit ready access to the full internal diameter of the vent pipe when necessary. (4) *Plugging oil or gas wells for use as degasification boreholes.* Procedures to be utilized when plugging gas or oil wells for subsequent use of degasification boreholes are as follows: (i) A cement plug will be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and provide at least 200 feet of expanding cement below the lowest minable coalbed; (ii) to facilitate methane drainage, degasification casing of suitable diameter, slotted or perforated throughout its lower 150 to 200 feet will be set in the borehole to a point 10 to 30 feet above the top of the expanding cement; (iii) the annulus between the degasification casing and the borehole wall will be cemented from a point immediately above the slots or perforations to the surface; (iv) the degasification casing will be cleaned out for its total length; and (v) the top of the degasification casing will be fitted with a wellhead equipped as required by the District Manager. Such equipment may include check valves, shut-in valves, sampling port, flame arrester equipment, and security fencing. The petitioner further states that when mining through a plugged oil or gas well, the District Manager or designee will be notified prior to mining within 300 feet of the well and when a specific plan is developed for mining through each well. Within 60 days after this Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. These proposed revisions will include initial and refresher training regarding compliance with the terms and conditions stated in the Proposed Decision and Order. Persons may review a complete description of the petitioner's procedures for implementing the proposed alternative method at the MSHA address listed in this notice. The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2009–058–C.

Petitioner: Perry County Coal Corporation, 1845 S KY Hwy 15, Hazard, Kentucky 41701.

Mine: E4–1 Mine, MSHA I.D. No. 15–18565, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit the E4–1 Mine to increase the maximum length of trailing cables supplying power to permissible pumps in the mines. The petitioner states that: (1) This petition will apply only to trailing cables supplying three-phase, 480-volt power for permissible pumps; (2) the maximum length of the 480-volt power for permissible pump will be 4,000 feet; (3) all circuit breakers used to protect trailing cables exceeding the pump approval length or Table 9 of Part 18 will have an instantaneous trip unit calibrated to trip at 75 percent of phase to phase short-circuit current. The trip setting of these circuit breakers will be sealed or locked, and these circuit breakers will have permanent legible labels. Each label will identify the circuit breaker as being suitable for protecting the trailing cables, and the labels will be maintained legible. In instances where a 75 percent instantaneous set point will not allow a pump to start due to motor inrush, a thermal magnetic breaker will be furnished. The thermal rating of the circuit breaker will be no greater than 75 percent of the available short-circuit current and the instantaneous setting will be adjusted one setting above the motor inrush trip point. This setting will also be sealed or locked; (4) replacement instantaneous trip units used to protect pump trailing cables exceeding the length of Table 9 of Part 18 will be calibrated to trip at 75 percent of the available phase to phase short circuit current and this setting will be sealed or locked; (5) permanent warning labels will be installed and maintained on the cover(s) of the power center to identify the location of each sealed or locked short-circuit protection device. These labels will warn miners not to change or alter the short circuit settings; (6) the pump circuits attached to this petition have greater lengths than approved or in Table 9. All future pump installation with excessive cable lengths will have a short-circuit survey conducted and items 1–5 will be implemented. A copy of each pump's short-circuit survey will be available at the mine site for inspection; and (7) the petitioner's alternative method will not be implemented until designated miners have been trained to examine the integrity of the seals or locks, verify the short-circuit settings, and perform proper procedures for examining trailing cables for defects and damage. The petitioner further states that within 60 days after the Proposed Decision and Order becomes final, proposed revisions for approved 30 CFR Part 48 training plan at any of the listed mines will be submitted to the Coal Mine Safety and Health District Manager. The training plan will include: (a) Training in the mining methods and operating procedures for protecting the trailing cables against damage; (b) training in proper procedures for examining the trailing cables to ensure they are in safe operating condition; (c) training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; and (d) training in how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained; and (e) the procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners at Perry County Coal Corporation than is provided the existing standard.

Dated: January 14, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–935 Filed 1–19–10; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9075; NRC–2009–0575]

Powertech (USA) Inc.; Dewey-Burdock Project; New Source Material License Application; Notice of Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: By letter dated August 10, 2009, Powertech (USA) (Powertech) submitted to the U.S. Nuclear Regulatory Commission (NRC) an application for a new source material license. The requested license, or the proposed action, would authorize the construction, operation, and decommissioning of Powertech's proposed *in-situ* uranium recovery (ISR, also known as *in-situ* leach) facilities, and would require restoration of the aquifer from which the uranium would be extracted. A notice of receipt and availability of the license application, including the Environmental Report (ER), and opportunity to request a hearing was published in the **Federal Register** on January 05, 2010 (75 FR 467–471).

The purpose of this notice of intent is to inform the public that the NRC will be preparing a site-specific Supplemental Environmental Impact Statement (SEIS) regarding the proposed action. The SEIS will tier off of the Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (ISR GEIS) that was published in 2009. As outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to use the environmental review process set forth in its 10 CFR Part 51 regulations to coordinate compliance with Section 106 of the National Historic Preservation Act.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC National Environmental Policy Act (NEPA) process or the environmental review process related to the Dewey-Burdock Uranium Project application, please contact the NRC Environmental Project Manager, Haimanot Yilma, at (301) 415–8029 or *haimanot.yilma@nrc.gov.*

Information and documents associated with the Dewey-Burdock Uranium Project, including the license application, are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html* and on the NRC's Dewey-Burdock Uranium Project web page: *http://www.nrc.gov/info-finder/materials/uranium/apps-in-review/dewey-burdock-new-app-review.html.* Documents may also be obtained from NRC's Public Document Room at the U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

Powertech submitted its application for a 10 CFR Part 40 license by letter dated August 10, 2009. A notice of receipt and availability of the license application, including the ER, and opportunity to request a hearing was published in the **Federal Register** on January 5, 2010 (75 FR 467471).

The NRC is required by 10 CFR 51.20(b)(8) to prepare an environmental impact statement (EIS) or supplement to an EIS for the issuance of a license to possess and use source material for uranium milling. The ISR GEIS and the site-specific SEIS will meet this regulatory requirement. The purpose of this NOI is to inform the public that the

NRC staff, as part of its review of Powertech's application, is preparing a draft SEIS for public comment that will tier off of the ISR GEIS (NUREG–1910). While NRC's Part 51 regulations do not require scoping for SEISs, the NRC staff is planning to place ads in newspapers serving communities near the proposed site, requesting information and comments from the public regarding the proposed action. NRC staff may also use relevant information gathered during scoping for the GEIS to define the scope of the SEIS. In preparing the SEIS, the NRC staff is consulting with Bureau of Land Management; Region 8 Environmental Protection Agency; U.S. Fish & Wildlife Service; U.S. Army Corps of Engineers; South Dakota Department of Environment and Natural Resources; South Dakota State Historic Preservation Office; potentially interested Tribes and public interest groups; South Dakota Game and Fish Department; and the Forest Service.

The NRC has begun evaluating the potential environmental impacts associated with the proposed ISR facility in parallel with the ongoing safety review of the license application. The environmental evaluation will be documented in draft and final SEISs in accordance with NEPA and NRC's implementing regulations contained in 10 CFR Part 51.

2.0 Dewey-Burdock ISR Facilities

The facilities, if licensed, would include a central processing plant, satellite facility, accompanying wellfields (including injection and production wells), and ion exchange columns. The ISR process involves the dissolution of the water-soluble uranium from the mineralized host sandstone rock by pumping oxidants (oxygen or hydrogen peroxide) and chemical compounds (sodium bicarbonate) through a series of injection wells. The uranium-rich solution is transferred from production wells to either the central processing plant or satellite facility for uranium concentration using ion exchange columns. Final processing is conducted in the central processing plant to produce yellowcake, which would be sold to offsite facilities for further processing and eventual use as commercial fuel in nuclear power reactors.

3.0 Alternatives To Be Evaluated

No-Action—The no-action alternative would be to deny the license application. Under this alternative, the NRC would not issue the license. This serves as a baseline for comparison.

Proposed action—The proposed federal action is to issue a license authorizing the possession and use of source material at the proposed ISR facilities. The license review process analyzes the safety and environmental issues related to the construction, operation, and decommissioning of the ISR facilities, and the restoration of the aquifer from which the uranium would be extracted. The ISR facilities would be located near Edgemont, South Dakota in Custer and Fall River Counties. The applicant would be issued an NRC license under the provisions of 10 CFR Part 40.

Other alternatives not listed here may be identified through the environmental review process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the SEIS:

- *Land Use:* Plans, policies, and controls;
- *Transportation:* Transportation modes, routes, quantities, and risk estimates;
- *Geology and Soils:* Physical geography, topography, geology, and soil characteristics;
- *Water Resources:* Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- *Ecology:* Wetlands, aquatic, terrestrial, economically and recreationally; important species, and threatened and endangered species;
- *Air Quality:* Meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- *Noise:* Ambient, sources, and sensitive receptors;
- *Historical and Cultural Resources:* Historical, archaeological, and traditional cultural resources;
- *Visual and Scenic Resources:* Landscape characteristics, manmade features and viewshed;
- *Socioeconomics:* Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, and education;
- *Environmental Justice:* Potential disproportionately high and adverse impacts to minority and low-income populations;
- *Public and Occupational Health:* Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
- *Waste Management:* Types of wastes expected to be generated, handled, and stored; and
- *Cumulative Effects:* Impacts from past, present, and reasonably foreseeable actions at and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts.

5.0 The NEPA Process

The SEIS for the Dewey-Burdock Uranium Project will be prepared pursuant to the NRC's NEPA regulations at 10 CFR Part 51. The NRC will conduct its environmental review of the application and as soon as practicable, the NRC and its contractor will prepare and publish a draft SEIS. The NRC currently plans to have a 45-day public comment period for the draft SEIS. Availability of the draft SEIS and the dates of the public comment period will be announced in the **Federal Register** and the NRC Web site: *http://www.nrc.gov.* The final SEIS will include responses to public comments received on the draft SEIS.

Dated at Rockville, Maryland, this 12th day of January, 2010.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–955 Filed 1–19–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on AP1000; Revision to February 2–3, 2010 ACRS Meeting Federal Register Notice

The **Federal Register** Notice for the ACRS Subcommittee Meeting on AP1000 scheduled to be held on February 2–3, 2010, is being revised to notify the following:

The meeting will be open to public attendance with exception of portions that may be closed to protect unclassified safeguards information or information that is proprietary to Westinghouse Electric Company and its contractors, pursuant to 5 U.S.C. 552b(c)(3) and (4).

The notice of this meeting was previously published in the **Federal Register** on Wednesday, January 13, 2010 [75 FR 1831]. All other items remain the same as previously published.

Further information regarding this meeting can be obtained by contacting

Peter Wen, Designated Federal Official (*Telephone:* 301–415–2832, *E-mail: Peter.Wen@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (ET).

Dated: January 13, 2010.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–952 Filed 1–19–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission

DATE: Weeks of January 18, 25, and February 1, 8, 15, 22, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 18, 2010

Tuesday, January 19, 2010

9:30 a.m.—Briefing on the NRC Enforcement and Allegations Programs (Public Meeting) (Contact: Shahram Ghasemian, 301–415–3591)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of January 25, 2010—Tentative

Tuesday, January 26, 2010

9:30 a.m.—Briefing on Office of Nuclear Reactor Regulation—Programs, Performance, and Future Plans (Public Meeting) (Contact: Quynh Nguyen, 301–415–5844)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of February 1, 2010—Tentative

There are no meetings scheduled for the week of February 1, 2010.

Week of February 8, 2010—Tentative

Tuesday, February 9, 2010

9:30 a.m.—Briefing on Regional Programs—Programs, Performance, and Future Plans (Public Meeting) (Contact: Richard Barkley, 610–337–5065)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of February 15, 2010—Tentative

Thursday, February 18, 2010

9:30 a.m.—Briefing on Office of Nuclear Regulatory Research—Programs, Performance, and Future Plans (Public Meeting) (Contact: Patricia Santiago, 301–251–7982)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of February 22, 2010—Tentative

Tuesday, February 23, 2010

9:30 a.m.—Briefing on Decommissioning Funding (Public Meeting) (Contact: Thomas Fredrichs, 301–415–5971)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., Braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: January 14, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–1042 Filed 1–15–10; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61345; File No. SR–NASDAQ–2008–104]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Adopt a Modified Sponsored Access Rule

January 13, 2010.

I. Introduction

On December 30, 2008, The NASDAQ Stock Market LLC ("Nasdaq" 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 modify its rule governing electronic access to the Exchange's order execution systems. On January 28, 2009, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 29, 2009.[3] The Commission received thirteen comment letters on the proposal.[4] On October 19,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59275 (January 22, 2009), 74 FR 5193.

[4] Letters to Elizabeth M. Murphy, Secretary, Commission, from Harvey Cloyd, Chief Executive Officer, Electronic Transaction Clearing, Inc., dated February 5, 2009 ("ETC Letter"); John Jacobs, Director of Operations, Lime Brokerage LLC, dated February 17, 2009 ("Lime I Letter"); Manisha Kimmel, Executive Director, Financial Information Forum, dated February 19, 2009 ("FIF Letter"); Ted Myerson, President, FTEN, Inc., dated February 19, 2009 ("FTEN I Letter"); Michael A. Barth, Executive Vice President, OES Market Group, dated February 23, 2009 ("OES Letter"); Jeff Bell, Executive Vice President, Clearing and Technology Group, Wedbush Morgan Securities, dated February 23, 2009 ("Wedbush Letter"); Stuart J. Kaswell, Executive Vice President & General Counsel, Managed Funds Association, dated February 24, 2009 ("MFA Letter"); Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated February 26, 2009 ("SIFMA I Letter"), Nicole Harner Williams, Vice President, Associate General Counsel, Penson Financial Services, Inc., dated February 27, 2009 ("Penson Letter"); Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, dated June 15, 2009 ("Lek Letter"); letter to David S. Shillman, Associate Director, Division of Trading and Markets ("Division"), James A. Brigagliano, Associate Director, Division, and A. Duer, Meehan, Associate Director, Office of Compliance Inspections and Examinations, Commission, from Gary LaFever, Chief Corporate Development Officer, FTEN, Inc., dated April 29, 2009 ("FTEN II Letter"); letter to James Brigagliano, Co-Acting Director, David Shillman, Associate Director, John Roeser,

Continued

2009, Nasdaq filed Amendment No. 2 to the proposed rule change and responded to the comment letters. On October 23, 2009, Nasdaq filed Amendment No. 3 to the proposed rule change. This notice and order provides notice of filing of Amendment Nos. 2 and 3, and grants accelerated approval to the proposed rule change, as modified by Amendment Nos. 1, 2, and 3.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto

The Exchange proposes to modify Nasdaq Rule 4611 to improve its existing regulatory framework governing the manner in which a Nasdaq member provides access to other entities to Nasdaq order execution systems through the use of the member firm's market participant identifier ("MPID").[5] Nasdaq notes that the proposal is designed to ensure a member firm is assuming full responsibility for its customers' trading activity and has effective financial and regulatory controls in place to protect market participants from systemic risk and preserve the integrity of the marketplace.

Under the proposal, a Nasdaq member that enters into an arrangement with another person or entity (*e.g.,* a customer, another member, or a non-member broker-dealer) to provide that person with access to Nasdaq or otherwise allow such person to route its orders to Nasdaq using the member's MPID shall do so through either a Sponsored Access System or a Member System, as defined in the rule.[6] A Sponsored Access System is defined as any system that applies pre- and post-trade financial and regulatory controls set forth in proposed sections (d)(4) and (d)(5) of Rule 4611 and that is not administered and controlled solely by the Sponsoring Member.[7] A Member System is defined as any system administered and controlled solely by the Sponsoring Member and that applies the pre- and post-trade financial and regulatory controls set forth in proposed sections (d)(4) and (d)(5) of Rule 4611.[8]

Members that provide such access are responsible for all trading conducted pursuant to that arrangement to the same extent as trading directly conducted by the member for customers. The member is responsible for implementing policies and procedures for supervising and monitoring the trading effected pursuant to the arrangement to ensure that it is in compliance with all applicable federal securities laws and rules and Nasdaq rules. This obligation applies irrespective of the manner in which orders pursuant to such arrangements reach Nasdaq.

The proposal defines the two types of access a member provides to another person or entity to access Nasdaq, Sponsored Access and Direct Market Access.[9] Sponsored Access is defined as the practice by a member ("Sponsoring Member") of providing access to Nasdaq to another person, firm, or customer ("Sponsored Participant") whereby the Sponsored Participant enters orders into Nasdaq using a Sponsored Access System but the orders do not pass through a Member System prior to reaching Nasdaq. Direct Market Access is defined as the practice by a Sponsoring Member of providing access to Nasdaq to another person, firm, or customer ("Sponsored Participant") whereby the Sponsored Participant makes decisions regarding order routing and order entry but the orders pass through a Member System prior to reaching Nasdaq.

The proposal requires Sponsoring Members that provide Direct Market Access to, at a minimum, comply with the financial controls and regulatory controls set forth in proposed sections (d)(4) and (d)(5) of Rule 4611. In addition, the proposal requires Sponsoring Members that provide Sponsored Access to, at a minimum, comply with the contractual provisions, financial controls, and regulatory controls set forth in proposed sections (d)(3), (d)(4), and (d)(5) of Rule 4611.

A. Contractual Provisions

Pursuant to proposed section (d)(3) of Rule 4611, a Sponsoring Member that provides Sponsored Access shall execute and maintain agreements with each Sponsored Participant containing the following commitments:

- All trading activity by the Sponsored Participant shall comply with all applicable federal securities laws and rules and Exchange rules, including but not limited to the Nasdaq Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Nasdaq Market Center ("Regulatory Requirements").
- The Sponsored Participant shall promptly upon request provide the Sponsoring Member with access to such books and records and financial information that is necessary to allow the Sponsoring Member to comply with its regulatory obligations with respect to activity of the Sponsored Participant within the Sponsored Access arrangement, and otherwise cooperate with the Sponsoring Member in furtherance of the Sponsoring Member's compliance with applicable Regulatory Requirements. Information provided by Sponsored Participants to Sponsoring Members pursuant to such requests shall be maintained as confidential by the Sponsoring Member, provided that such information shall be available to Nasdaq upon request for regulatory purposes.[10]
- The Sponsored Participant shall maintain its trading activity within the credit, product or other financial limits specified by the Sponsoring Member.
- The Sponsored Participant shall maintain all technology permitting sponsored access to Nasdaq in a physically secure manner and may not permit unauthorized individuals to use or obtain access to Nasdaq. Sponsored Participant shall familiarize its authorized individuals with the Regulatory Requirements and will provide appropriate training prior to use or access to Nasdaq.
- The Sponsored Participant shall agree that the Sponsoring Member or Nasdaq may immediately terminate the Sponsored Access if the Sponsoring Member or Nasdaq determines that continuing such access poses serious risk to the Sponsoring Member or to the integrity of the market.

In addition, a Sponsoring Member that provides Sponsored Access shall execute and maintain agreements with each third party ("Third Party Provider") that provides a Sponsored Access System to Sponsored Participants for accessing Nasdaq.[11] The agreements shall specify which of the financial and regulatory controls stated in proposed sections (d)(4) and (d)(5) are satisfied by the technology provided, and contain the following commitments:

- Third Party Providers shall promptly upon request provide the Sponsoring Member with access to such books and records and financial information that is necessary to allow the Sponsoring Member to comply with its regulatory obligations with respect to activity of the Sponsored Participant

Assistant Director, Marc McKayle, Special Counsel, Division, Commission, from John Jacobs, Chief Operations Officer, Lime Brokerage LLC, dated June 30, 2009 ("Lime II Letter"); and letter to David S. Shillman, Associate Director, Division, from Ann Vlcek, Managing Director and Associate General Counsel, SIFMA, dated November 23, 2009 ("SIFMA II Letter").

[5] The following description incorporates changes proposed by Nasdaq in Amendment Nos. 1, 2, and 3. *See* Section IV, *infra,* for a discussion of the changes proposed in Amendment Nos. 2 and 3.

[6] *See* Amendment Nos. 2 and 3.

[7] *See* Amendment No. 2.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

within the Sponsored Access arrangement, and otherwise cooperate with the Sponsoring Member in furtherance of Sponsoring Member's compliance with applicable Regulatory Requirements. Information provided by Sponsored Participants to Sponsoring Members pursuant to such requests shall be maintained as confidential by the Sponsoring Member, provided that such information shall be available to Nasdaq upon request for regulatory purposes.

- Third Party Providers shall maintain all technology permitting Sponsored Access to Nasdaq in a physically secure manner and may not permit unauthorized individuals to use or obtain access to Nasdaq.
- Third Party Providers shall agree that Nasdaq or its agent may audit the Sponsored Access System and that the Sponsoring Member or Nasdaq may immediately terminate the Sponsored Access if the Sponsored Participant or Third Party Provider fails to abide by its commitments.

B. Financial Controls

Under proposed section (d)(4) of Rule 4611, each Sponsoring Member shall establish adequate procedures and controls that permit it to effectively monitor and control the Sponsored Access or Direct Market Access to systemically limit the Sponsoring Member's financial exposure. At a minimum, the Member System or Sponsored Access System shall be reasonably designed to: [12]

- Prevent each Sponsored Participant from entering orders that in aggregate exceed appropriate pre-set credit thresholds. Sponsoring Members may also set finely-tuned credit thresholds by sector, security or otherwise.
- Prevent Sponsored Participants from trading products that the Sponsoring Member is restricted from trading or that the Sponsored Participant is restricted from trading for reasons specific to the Sponsored Participant.
- Prevent Sponsored Participants from submitting erroneous orders by providing for the rejection of orders that exceed certain price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

C. Regulatory Controls

Under proposed section (d)(5), each Sponsoring Member shall establish adequate procedures and controls reasonably designed to permit it to effectively monitor and control compliance with Regulatory Requirements.[13] Specifically, each Sponsoring Member shall have systemic controls reasonably designed to ensure compliance by the Sponsored Participant with all applicable Regulatory Requirements.

In addition, each Sponsoring Member shall ensure that appropriate supervisory personnel receive and review timely reports of all trading activity by its Sponsored Participants sufficient to permit the Sponsoring Member to comply with applicable Regulatory Requirements, and to monitor for illegal activity such as market manipulation or insider trading. At a minimum, appropriate supervisory personnel should receive immediate post-trade execution reports of trading activity of all Sponsored Participants, including their identities, all required audit trail information by no later than the end of the trading day, and all information necessary to create and maintain the trading records required by applicable Regulatory Requirements by no later than the end of the trading day. Appropriate supervisory personnel shall review execution reports immediately and all other reports promptly.[14]

III. Discussion and Commission's Findings

After careful review of the proposed rule change, as amended, the comment letters, and Nasdaq's response to the comment letters, 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.[15] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[16] 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.

Specifically, the Commission believes that Nasdaq's proposed rule change should clarify and strengthen a Sponsoring Member's obligations to control risks when it provides customers access to Nasdaq's execution facilities, whether through Direct Market Access or Sponsored Access. The Nasdaq proposed rule change would require a Sponsoring Member that offers Direct Market Access or Sponsored Access to establish effective procedures and controls to systemically limit its financial exposure and comply with applicable Regulatory Requirements, in the manner set forth therein. Sponsoring Members providing Sponsored Access would also be required to comply with certain contractual provisions.

Generally, Nasdaq's proposed rule change amends Nasdaq Rule 4611(d) to: (1) Define categories of electronic access and explicitly include Direct Market Access and Sponsored Access; (2) require certain specific systemic financial and regulatory controls; (3) require certain contractual commitments for Sponsored Access; and (4) require the real-time receipt and timely review of relevant trade activity reports. The Commission believes that the proposal should help reduce the risks that arise when a Sponsoring Member provides a Sponsored Participant with access to Nasdaq.

Currently, Nasdaq Rule 4611(d), which governs sponsored access to Nasdaq's order execution systems, is substantially similar to sponsored access rules adopted by the other national securities exchanges.[17] However, Nasdaq proposes to modify Rule 4611(d) to clarify and strengthen the risk controls required by Sponsoring Members providing electronic access to Nasdaq's order execution systems.

The Commission received thirteen comment letters on Nasdaq's proposal, as modified by Amendment No. 1 ("Original Proposal").[18] Most commenters offered general support for Nasdaq's proposal, but raise various issues regarding specific aspects of the proposal.[19] Three commenters believe that Nasdaq's proposal is either unnecessary because Nasdaq's current access rule is adequate or that the proposal should be limited to apply only to Sponsored Access.[20] One commenter noted concerns about Sponsored Access and suggested that Nasdaq's proposal does not go far enough to address Sponsored Access.[21]

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] 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).

[16] 15 U.S.C. 78f(b)(5).

[17] *See, e.g.*, New York Stock Exchange LLC Rule 123B.30 and NYSE Arca, Inc. Rule 7.29(b).

[18] *See supra* note 4.

[19] *See* FIF Letter, FTEN I Letter, Wedbush Letter, MFA Letter, SIFMA I Letter, and Lek Letter.

[20] *See* ETC Letter, OES Letter, and Penson Letter.

[21] *See* Lime I Letter.

A. Definition of Sponsored Access and Scope of the Proposal

In the Original Proposal, the definition of Sponsored Access included three categories of access: (1) Direct Market Access, where the Sponsored Participant's orders pass through the Sponsoring Member's systems prior to reaching Nasdaq; (2) Sponsored access, where the Sponsored Participant enters orders directly into Nasdaq via a dedicated port provided by the Sponsoring Member ("Direct Sponsored Access" or "DSA"); and (3) direct access where a service bureau or other third party provides Sponsored Participants with technology to access Nasdaq under the auspices of and via an arrangement with the Sponsoring Member ("Third Party Sponsored Access" or "TPSA").

Four commenters question whether the proposal properly defines Sponsored Access and whether the rule is overly broad.[22] Two commenters suggest that the definition of Sponsored Access should be limited to DSA and TPSA.[23] These commenters believe that Direct Market Access is already effectively regulated under existing laws and regulations. One commenter expresses concern that the proposal would modify the contractual obligations imposed on Direct Market Access arrangements.[24] The two other commenters recommend that the rule be limited to DSA.[25]

Nasdaq agrees, in part, that the proposed rule should focus on Sponsored Access arrangements and amends the proposal in three ways. First, Nasdaq adds prefatory language to Rule 4611(d) to clearly articulate the responsibility of all members to have policies and procedures reasonably designed to regulate all orders that it enters into Nasdaq systems under its own MPID(s) regardless of the order entry and access arrangement. Second, Nasdaq amends Rule 4611(d)(1) to distinguish between Sponsored Access and Direct Market Access to eliminate the distinction set forth in the original proposal between Direct Sponsored Access and Third Party Sponsored Access. Third, Nasdaq defines Member System and Sponsored Access System to ensure that all DMA and Sponsored Access arrangements are effectively regulated by a system that provides adequate regulatory and financial controls.

While Nasdaq concedes that regulatory obligations for Direct Market Access are generally understood in uniform manner, it acknowledges that the same could not be stated with respect to Sponsored Access as Sponsoring Members could hold differing views of what that responsibility requires. Because it is critical to establish a clear understanding of the regulatory and financial controls required in all access arrangements, Nasdaq determined that both Direct Market Access and Sponsored Access should be addressed by the rule. Nasdaq stated that the key to proper regulation of both Sponsored Access and Direct Market Access are the regulatory and financial controls set forth in proposed Rule 4611(d)(4) and (5). Nasdaq believes that Nasdaq members providing Direct Market Access may already operate Member Systems that provide the regulatory and financial controls set forth in proposed subsections (d)(4) and (d)(5), but the proposal could serve to clarify the obligations of members in Direct Market Access arrangements—and bolster market confidence in the integrity and security of the market—without imposing additional obligations.

Some commenters express concern regarding the apparent scope of the proposal, and two commenters believe that the rule should take into account differences between a Sponsored Participant that is a non-broker-dealer, non-exchange member, or an exchange member.[26] Specifically, one commenter believes that Sponsored Participants that are non-broker-dealers should be subject to the highest level of due diligence and oversight because they are unregulated entities. This commenter noted that Sponsored Participants that are non-member broker-dealers should be subject to policies and procedures to ensure that their trading is consistent with the exchange rules without requiring the Sponsoring Member to be responsible for non-exchange regulatory requirements. The commenter further noted that regulation of Sponsored Participants that are member broker-dealers was duplicative and unnecessary.[27] Another commenter expressed that the proposal could impose duplicative regulatory requirements on the Sponsoring Member and Sponsored Participant, if the Sponsored Participant is a broker-dealer.[28] Nasdaq responded that it believes that it is the responsibility of each Sponsoring Member to have policies and procedures reasonably designed to control the risks of all orders that it enters into Nasdaq systems under its own MPID(s) regardless of the order entry and access arrangement. Accordingly, Nasdaq's proposal would apply to Sponsoring Members regardless of whether the Sponsored Participant is a broker-dealer, non-broker-dealer, or non-member broker-dealer.

Nasdaq's proposal, as modified by Amendment Nos. 1, 2, and 3 ("Final Proposal"), requires that members that provide electronic access to Nasdaq to another person or entity using the member's MPID must do so through either a Sponsored Access System or a Member System. A Sponsored Access System is defined as any system that applies pre- and post-trade financial and regulatory controls set forth in the rule and that is not administered and controlled solely by the Sponsoring Member.[29] A Member System is defined as any system administered and controlled solely by the Sponsoring Member and that applies the pre- and post-trade financial and regulatory controls set forth in the rule. In addition, the proposal makes clear that members that provide such access are responsible for all trading conducted pursuant to that arrangement to the same extent as trading directly conducted by the member for customers.

The Final Proposal defines the two types of electronic access a member provides to another person or entity to access Nasdaq: (1) Sponsored Access, whereby the Sponsored Participant enters orders into Nasdaq using a Sponsored Access System but the orders do not pass through a Member System prior to reaching Nasdaq; and (2) Direct Market Access, whereby the Sponsored Participant makes decisions regarding order routing and order entry but the orders pass through a Member System prior to reaching Nasdaq. A member that provides Sponsored Access must, at a minimum, comply with the contractual provisions, financial controls, and regulatory controls set forth in the rule. A member that provides Direct Market Access must, at a minimum, comply with the financial controls and regulatory controls set forth in the rule.

The Commission shares Nasdaq's concern that unfettered access by customers of member firms to trading systems presents serious risks to the market and its participants.[30] The Commission believes that it is

[22] *See* ETC Letter, FIF Letter, SIFMA I Letter, and Penson Letter.

[23] *See* FIF Letter and SIFMA I Letter.

[24] *See* FIF Letter.

[25] *See* ETC Letter and Penson Letter.

[26] *See* Wedbush Letter and Penson Letter.

[27] *See* Wedbush Letter.

[28] *See* Penson Letter.

[29] *See* Amendment No. 2.

[30] *See* SIFMA I Letter, Lime I Letter, FTEN I Letter, and Lek Letter.

consistent with the Act for Nasdaq to require that access to its market occur through systems that apply appropriate financial and regulatory controls to address the risks of the activity. In addition, the Commission agrees that these requirements should exist whether the Sponsored Participant is a non-broker-dealer, a non-member broker-dealer, or a member broker-dealer. The Commission believes this is appropriate because in all instances, the Sponsoring Member assumes, at a minimum, the intra-day financial risks incurred as a result of trading under its MPID. Further, the Sponsoring Member is uniquely positioned to prevent erroneous trades and comply with Exchange rules and other applicable Regulatory Requirements.

B. Contractual Provisions

Several commenters object to the contractual provisions that Nasdaq proposed to apply to Sponsored Access arrangements.[31] Two commenters object to the requirement that Sponsoring Members execute contracts with Third Party Providers that require Third Party Providers to sign detailed agreements with each Sponsored Participant.[32] One commenter argues that, in the case of TPSA, the burden of compliance and related contractual obligations should remain with the Sponsoring Member, rather than with the third-party service bureau as the Original Proposal suggests.[33] Another commenter contends that requiring Third Party Providers to execute contracts with Sponsored Participants containing the specified provisions is unduly burdensome, not justified by the benefits, and redundant of the existing obligations of the Sponsoring Member.[34]

Nasdaq agrees that the Original Proposal was needlessly burdensome in requiring Third Party Providers to execute with each Sponsored Participant a contract containing the detailed provisions proposed in Rule 4611(d)(3). Accordingly, in the Final Proposal Nasdaq eliminates the requirement that Third Party Providers execute agreements with Sponsored Participants containing detailed contractual provisions identical to those required between Sponsoring Members and Sponsored Participants. Instead, the Final Proposal requires that the agreement identify the financial and regulatory controls that are satisfied by the technology provided by the third party, and contain commitments appropriately tailored to the relationship with the third party including: (1) Limited access to books and records; (2) physical security of technology that accesses Nasdaq; (3) the ability of Nasdaq or its agent to audit the Sponsored Access System; and (4) the ability for the Sponsoring Member or Nasdaq to terminate access to Nasdaq. Nasdaq believes that Sponsoring Members should have individual contractual relationships with all Sponsored Participants and contracts with any Third Party Providers that operate technology that the member utilizes to enable, monitor, or control Sponsored Access or to satisfy the required financial and regulatory controls that should allow Nasdaq or its agent to audit the Sponsored Access System.

Two commenters object to aspects of the Original Proposal that would require Sponsored Participants to make their books and records and corporate and financial information available to the Sponsoring Member upon request.[35] One commenter notes that because the proposed contractual provisions implicate sensitive proprietary information, they should be limited to information relevant to oversight of trading activity conducted under the particular Sponsored Access arrangement and that information produced should be maintained as confidential by the Sponsoring Member and regulators.[36] In response, Nasdaq agrees that it can achieve effective exchange oversight through more narrowly-tailored contractual provisions between Sponsoring Members and Sponsored Participants. Accordingly, the Final Proposal limits access to the books and records of a Sponsored Participant that are necessary to allow the Sponsoring Member to comply with its regulatory obligations with respect to activity of the Sponsoring Participant within the Sponsored Access arrangement. In addition, the Final Proposal requires that such information received by the Sponsoring Member be maintained as confidential, but available to Nasdaq upon request for regulatory purposes.

The commenter also objects to the requirement that the contract include a provision permitting the Sponsoring Member or Nasdaq to immediately terminate access in the event that the Sponsored Participant or Third Party Provider fails to abide by its contractual commitments.[37] The commenter argues that Sponsoring Members and Sponsored Participants have established reasonable grace and cure periods for breaches of sponsorship agreements, and that such terms should be left to those parties.[38] Nasdaq agrees that the parties should remain free to negotiate commercial terms but is also aware that these terms are generally designed to protect the parties' commercial interests rather than the interests of Nasdaq and other market participants. Because Nasdaq has a separate interest in maintaining a fair and orderly market, including the ability to limit access by market participants that disrupt the markets or pose systemic risks, Nasdaq amends and limits proposed Rule 4611(d)(3)(v) to protecting Nasdaq's interest in maintaining a fair and orderly market rather than governing commercial terms between the parties. Specifically, the Final Proposal limits the required provision allowing termination of the Sponsored Access arrangement to situations where Nasdaq or the Sponsoring Member determines that a continuation of the arrangement poses serious risk to the Sponsoring Member or to the integrity of the market.

The Commission believes that the proposed contractual provisions required for Sponsored Access, as set forth in the Final Proposal, are consistent with the Act. The Commission notes that the required contractual provisions should facilitate effective oversight of Sponsored Access arrangements by the Sponsoring Member and Nasdaq by assuring Sponsored Participants have contractually committed to provide important information, conduct trading in an appropriate manner and otherwise cooperate with the Sponsoring Member and Nasdaq.

C. Financial Controls

Commenters express several concerns with the financial controls provisions of the Original Proposal, including the view that: (1) The provisions should allow for procedures and controls "reasonably designed" to prevent certain conduct, rather than impose a strict liability standard;[39] (2) it is not possible for Sponsoring Members to prevent the entry of orders in a Direct Sponsored Access arrangement;[40] (3) the financial controls provisions designed to prevent systemic risk are too general;[41] and (4) the product limitation provision should not impose restrictions on Sponsored

[31] *See* SIFMA I Letter, FIF Letter, MFA Letter, and ETC Letter.

[32] *See* FIF Letter and ETC Letter.

[33] *See* FIF Letter.

[34] *See* ETC Letter.

[35] *See* SIFMA I Letter and MFA Letter.

[36] *See* MFA Letter.

[37] *Id.*

[38] *Id.*

[39] *See* ETC Letter, Lime I Letter, and SIFMA I Letter.

[40] *See* SIFMA I Letter.

[41] *Id.*

Participants that are unique to the Sponsoring Member.[42] Nasdaq agrees that in a "procedures-based" regime, as Nasdaq proposes to govern Sponsored Access arrangements, such procedures cannot ensure compliance or prevent errors from occurring but should instead be reasonably designed to ensure compliance or prevent errors. Accordingly, Nasdaq amends Rule 4611(d)(4) to require "reasonably designed" procedures and controls.

Nasdaq's proposed financial controls provisions would require Sponsoring Members to undertake a creditworthiness determination and to develop monitoring and controls incorporating that determination. Nasdaq notes that it is not dictating how that determination is undertaken or implemented but the provision does require at a minimum that Sponsoring Members have real-time or nearly real-time ability to monitor and control the conduct of Sponsored Participants. Nasdaq adds that it is skeptical of the commenter's claims that such controls cannot be implemented and that requiring such controls would effectively prohibit Direct Sponsored Access. In fact, Nasdaq asserts that the commenter's claims are contradicted[43] by other comment letters.[44]

Nasdaq states that the product limitation provision is not designed to transfer to Sponsored Participants limitations that are specific to the Sponsoring Members, such as restrictions imposed by Exchange Act Rule 10b–18. The provision requires that Sponsoring Members be qualified to assess Sponsored Participants and limit trading to products for which the Sponsored Participant is qualified.

The Final Proposal requires each Sponsoring Member that provides either Sponsored Access or Direct Market Access to establish adequate procedures and controls that permit it to effectively monitor and control access to systemically limit the Sponsoring Member's financial exposure. At a minimum, the Member System or Sponsored Access System shall be reasonably designed to prevent each Sponsored Participant from entering orders that in aggregate exceed appropriate pre-set credit thresholds; prevent Sponsored Participants from trading products that the Sponsoring Member is restricted from trading or that the Sponsored Participant is restricted from trading for reasons specific to the Sponsored Participant; and prevent Sponsored Participants from submitting erroneous orders by providing for the rejection of orders that exceed certain price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

The Commission believes that the proposed financial controls required for Sponsored Access and Direct Market Access, as set forth in the Final Proposal, are consistent with the Act. The Commission believes that a requirement that each Sponsoring Member establish adequate procedures and controls that permit it to effectively monitor and control the Sponsored Access or Direct Market Access offered by it, to systemically limit the Sponsoring Member's financial exposure, should help reduce the risks associated with such access for the Sponsoring Members as well as other market participants.

D. Regulatory Controls

Commenters express concern regarding the regulatory controls provisions of the Original Proposal, including the view that: (1) The provisions should allow for procedures and controls "reasonably designed" to prevent certain conduct, rather than impose a strict liability standard;[45] (2) it is not practical for Sponsoring Members to regulate the conduct of Sponsored Participants on a real-time basis given that much current surveillance occurs on a post-trade basis;[46] (3) use of Sponsored Access Systems that cannot comply with pre-trade oversight and compliance obligations should not be permitted;[47] (4) providing a non-exclusive list of regulatory requirements will create confusion for market participants;[48] and (5) post-trade reports should be reviewed by "appropriate supervisory personnel" as defined by the Sponsoring Member.[49]

As with the proposed financial controls, Nasdaq agrees that in a "procedures-based" regime, as Nasdaq proposes to govern Sponsored Access arrangements, such procedures cannot ensure compliance or prevent errors from occurring, and should instead be reasonably designed to ensure compliance or prevent errors. Accordingly, Nasdaq proposes to modify Rule 4611(d)(5)(A) to require "reasonably designed" procedures and controls. However, Nasdaq continues to believe that the regulatory integrity of its market requires that all orders entered by Sponsored Participants be subject to real-time or nearly real-time regulatory controls.[50] In addition, because Nasdaq agrees that a non-exclusive list of regulatory requirements could cause confusion regarding both the regulatory requirements specifically listed as well as those not listed, a conforming change eliminating the non-exclusive list of regulatory requirements is contained in the Final Proposal.

The Final Proposal requires each Sponsoring Member to establish adequate procedures and controls reasonably designed to permit it to effectively monitor and control compliance with Regulatory Requirements. Specifically, each Sponsoring Member shall have systemic controls reasonably designed to ensure compliance by the Sponsored Participant with all applicable Regulatory Requirements.

Nasdaq also agrees with a commenter that firms should be free to designate personnel to review trading activity reports that have the requisite supervisory training and responsibility.[51] Nasdaq believes that "appropriate supervisory personnel" should review trading activity and that execution reports must be reviewed immediately and other reports must reviewed promptly. Accordingly, the proposal requires that each Sponsoring Member shall ensure that appropriate supervisory personnel receive and review timely reports of all trading activity by its Sponsored Participants sufficient to permit the Sponsoring Member to comply with applicable Regulatory Requirements, and to monitor for illegal activity such as market manipulation or insider trading. At a minimum, appropriate supervisory personnel should receive immediate post-trade execution reports of trading activity of all Sponsored Participants, including their identities, all required audit trail information by no later than the end of the trading day, and all information necessary to create and maintain the trading records required by

[42] *Id.*

[43] *See* Amendment No. 2.

[44] *See* FTEN I Letter ("Sponsored Access systems that do not provide pre-trade risk management should no longer be authorized * * * systems offered by Exchanges [or] developed in-house by Sponsoring Members and by third parties that provide pre-trade risk management * * * [could] be used to provide Sponsored Access). *Also see* Lime I Letter ("[I]t is critical that the [Sponsoring Member] concurrently monitor, on a real-time basis, the Sponsored Participant's order placement and trading activity * * *").

[45] *See* ETC Letter, Lime I Letter, and SIFMA I Letter.

[46] *See* FIF Letter, SIFMA I Letter, and MFA Letter.

[47] *See* Lime I Letter and FTEN I Letter.

[48] *See* SIFMA I Letter.

[49] *Id.*

[50] Two commenters opined that the use of Sponsored Access Systems that cannot comply with the pre-trade oversight and compliance obligations should not be permitted. *See* Lime I Letter and FTEN I Letter.

[51] *See* SIFMA I Letter.

applicable Regulatory Requirements by no later than the end of the trading day. Appropriate supervisory personnel shall review execution reports immediately and all other reports promptly.

The Commission believes that the proposed regulatory controls required for Sponsored Access and Direct Market Access, as set forth in the Final Proposal, are consistent with the Act. The Sponsoring Member ultimately is responsible for complying with all Regulatory Requirements to which it is subject in connection with trading activity conducted through use of its MPID. Requiring each Sponsoring Member to establish adequate procedures and controls reasonably designed to permit it to effectively monitor and control order flow sent to Nasdaq for compliance with Regulatory Requirements should help assure that such orders enter Nasdaq's systems in compliance with Regulatory Requirements. The Commission also notes that in today's highly automated trading environment, systemic controls are essential to reasonably ensure that orders sent to an exchange comply with Regulatory Requirements. The Commission also believes that requiring receipt and review of post-trade reports by the Sponsoring Member should provide surveillance personnel with important information about potential regulatory violations, and better enable them to investigate, report or halt suspicious or manipulative trading activity. The post-trade execution reports should provide a valuable supplement to the pre-trade risk controls contained in the Final Proposal.

Several commenters note the potential systemic risk posed by Sponsored Access arrangements and the importance to the marketplace of effective regulation of such arrangements.[52] In response to those commenters, Nasdaq notes that it is working to develop a proposal that would require Sponsoring Members to obtain a unique MPID for each Sponsored Participant. In addition, two commenters stressed that industry regulators should develop a uniform rule and then apply it consistently across all markets and all market participants.[53] Nasdaq agrees that the regulation of electronic access should be uniformly regulated as to not create the opportunity for arbitrage between the rules of competing exchanges.

[52] *See* Lime I Letter, Lek Letter, and FTEN I Letter.

[53] *See* SIFMA I Letter and Wedbush Letter.

E. Commission Findings

The Commission believes that Nasdaq's proposal is a productive step toward assuring that broker-dealers providing access to the markets, including through Sponsored Access and Direct Market Access arrangements, implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of that activity. In particular, Nasdaq's proposal requires Sponsoring Members to implement controls and procedures to address certain key risks, such as the potential breach of a credit limit, the submission of erroneous orders, and the failure to comply with Regulatory Requirements. The Commission also believes the requirement that a Sponsoring Member receive immediate post-trade execution reports should provide a valuable supplement to the pre-trade risk controls and represents an improvement over the rules and guidance issued by other self-regulatory organizations in this area. The Commission notes, however, that a Nasdaq rule would, of course, apply only to broker-dealers offering Sponsored Access or Direct Market Access to Nasdaq.

In addition, Nasdaq's proposal permits a fair amount of flexibility in the extent to which a Sponsoring Member can delegate the administration and control of its risk management controls to others, and rigor with which the financial controls are applied on a pre-trade basis. Nevertheless, the Commission believes that Nasdaq's proposal would strengthen the risk management requirements applicable to Nasdaq members that offer Sponsored Access or Direct Market Access, and thereby help address concerns about the risks posed by this activity to the Sponsoring Member and the markets. Accordingly, the Commission believes Nasdaq's proposal is consistent with the Act.

IV. Accelerated Approval of the Proposed Rule Change, as Modified By Amendment Nos. 1, 2, and 3 Thereto

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[54] for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, prior to the thirtieth day after the date of publication of notice of filing of Amendment Nos. 2 and 3 in the **Federal Register.**

[54] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

In Amendment No. 2, Nasdaq responds to comments on the Original Proposal. Several commenters argue that Nasdaq's proposed definition for Sponsored Access is overly broad and expands the scope of what the industry typically defines as Sponsored Access.[55] In response, Nasdaq limits the definition of Sponsored Access to instances where the Sponsored Participant enters orders directly into Nasdaq using the Sponsoring Member's MPID and the orders do not pass through a Member System before reaching Nasdaq. Nasdaq distinguishes Sponsored Access from Direct Market Access, where an Exchange member provides access to a firm or person that makes decisions on order routing and order entry, but the orders pass through a Member system before reaching Nasdaq. Nasdaq also eliminates the distinction in the Original Proposal between Direct Sponsored Access and Third Party Sponsored Access. Moreover, Nasdaq also defines two different types of systems, Member Systems and Sponsored Access Systems, to ensure that all Direct Market Access and Sponsored Access arrangements are effectively regulated with adequate financial and regulatory controls.

Several commenters also object to a requirement in the Original Proposal that Sponsoring Members execute contracts with Third Party Providers that would require Third Party Providers to in turn sign agreements with each Sponsored Participant.[56] The commenters believe that this requirement was needlessly burdensome and that the compliance burden should remain only with the Sponsoring Member.[57] Nasdaq responds by eliminating the requirement that Third Party Providers and Sponsored Participants must sign agreements between them. Nasdaq also modifies the proposal to clearly differentiate between two different types of agreements: those between Sponsoring Members and Sponsored Participants, and those between Sponsoring Members and Third Party Providers. Agreements between Sponsoring Members and Third Party Providers must identify financial and regulatory controls that are satisfied by the Third Party's technology, and must also contain commitments regarding limited access to books and records, physical security of technology, Nasdaq's ability to audit

[55] *See supra* notes 22–25.

[56] *See supra* note 32.

[57] *Id.*

the Sponsored Access system, and the ability for either the Sponsoring Member or Nasdaq to terminate Participant access.

Nasdaq also responds to comments regarding the financial and regulatory controls provisions of the Original Proposal. Commenters argue that the procedures and controls meant to prevent certain conduct should be "reasonably designed," rather than impose a strict liability standard;[58] and that the regulatory controls provision should not include a non-exclusive list of regulatory requirements that would potentially confuse market participants.[59] In Amendment No. 2, Nasdaq agrees with both points, and modifies the proposed rule change to require "reasonably designed" procedures and controls, and to eliminate the non-exclusive list of regulatory requirements. Nasdaq also clarifies that trading activity reports would be reviewed by "appropriate supervisory personnel." The Commission finds that Nasdaq's proposed changes in response to commenter concerns in Amendment No. 2 are consistent with the Act.

In Amendment No. 3, Nasdaq modifies language in the proposed rule change to clarify the requirement that when a Sponsoring Member provides another person or entity with access to Nasdaq, it must do so either through a Sponsored Access System or a Member System. By providing such access through either of these two types of systems, Sponsoring Members are responsible for all trading conducted pursuant to that arrangement to the same extent as trading directly conducted by the Member for its customers.[60] The Commission believes that this proposed change sufficiently clarifies the significant responsibilities that the Sponsoring Members must assume for any Sponsored Access arrangements. The Commission believes that Nasdaq's proposed changes in response to commenter concerns in Amendment No. 3 are consistent with the Act.

The changes proposed in Amendment Nos. 2 and 3, discussed above, seek to clarify the operation of the proposal and address commenters concerns regarding the proposal as noticed in the **Federal Register** on January 29, 2009. The Commission notes that one commenter requests that the proposal, as modified by Amendment Nos. 2 and 3, be published for notice and comment before Commission approval of the proposal.[61] The Commission believes that the changes proposed in Amendment Nos. 2 and 3, discussed above, are designed to address commenters' concerns as raised through the notice and comment process under Section 19(b).[62] Accordingly, the Commission finds that good cause exists to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2008–104 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–2008–104. 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 am and 3 pm. 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–NASDAQ–2008–104 and should be submitted on or before February 10, 2010.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[63] that the proposed rule change (SR–NASDAQ–2008–104), as modified by Amendment Nos. 1, 2, and 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–940 Filed 1–19–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61332; File No. SR–FINRA–2009–080]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook

January 12, 2010.

On November 17, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 adopt FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on December 11, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Rule 17a–4 of the Act requires members to retain their books and records for specified retention periods.[4] Pursuant to Rule 17a–4(g), a member that ceases doing business as a

[58] *See supra* notes 39–41 and 45.

[59] *See supra* note 48.

[60] *See proposed* Nasdaq Rule 4611(d).

[61] *See* SIFMA II Letter.

[62] *See* 15 U.S.C. 78s(b).

[63] 15 U.S.C. 78s(b)(2).

[64] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61116 (December 4, 2009), 74 FR 65817.

[4] 17 CFR 240.17a–4.

registered broker-dealer has a continuing obligation to retain its required books and records for the remainder of the specified retention periods.[5]

To that end, Form BDW (Uniform Request for Broker-Dealer Withdrawal) requires that the member identify and provide the contact information of the person who will have custody of the firm's books and records after the firm has discontinued its business operations. The form also requires that the firm provide the address where the books and records will be located, if different than the custodian's address. In addition, Form BDW provides that the firm and the person signing the form on behalf of the firm must certify that the firm's books and records will be preserved and made available for inspection.

NASD Rule 3121 requires a member to designate as the custodian of its required books and records on Form BDW a person who is associated with the firm at the time Form BDW is filed. The rule, which was approved by the Commission in 2000,[6] is intended to enhance FINRA's ability to obtain required books and records from firms that are no longer conducting business and to ensure that the custodian of the books and records has been subject to certain background checks.[7] There is no comparable Incorporated NYSE Rule. Therefore, FINRA proposed to adopt NASD Rule 3121 as FINRA Rule 4570 in the Consolidated FINRA Rulebook, with only minor technical changes. Specifically, NASD Rule 3121 currently states that a member must designate an associated person "as the custodian of the record"; the revised rule text will reflect that the associated person is designated "as the custodian of the member's books and records," which is consistent with the terminology used in Form BDW.

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 association.[8] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA's rules 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. The Commission believes that the proposed rule change will further the purposes of the Act by, among other things, enhancing FINRA's ability to obtain required books and records from member firms that are no longer conducting business. The Commission therefore believes that it is appropriate and consistent with the Act for the Exchange to include adopt the Custodian of Books and Records rule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–FINRA–2009–080) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–924 Filed 1–19–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 240.17a–4(g).

[6] *See* Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (Order Approving File No. SR–NASD–99–76).

[7] For example, associated persons who have custody of a member's original books and records relating to securities or funds are subject to the fingerprinting requirements of SEA Rule 17f–2 for purposes of a criminal background check.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6871]

30-Day Notice of Proposed Information Collections: DS–4143, Brokering Prior Approval (License), OMB No. 1405–0142; DS–4142, Annual Brokering Report, OMB No. 1405–0141

ACTION: Notice of request for public comment and submission to OMB of proposed collections of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Brokering Prior Approval (License).
- *OMB Control Number:* 1405–0142.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 980.
- *Estimated Number of Responses:* 100.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 200 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Annual Brokering Report.
- *OMB Control Number:* 1405–0141.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 980.
- *Estimated Number of Responses:* 600.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 1,200 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from January 20, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collections and supporting documents from Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2804, or via e-mail at *memosni@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond.

Abstract of proposed collections: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in export, temporary import, and brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: Electronically, mail, personal delivery, and/or fax.

Dated: January 8, 2010.

Robert S. Kovac,

Acting Deputy Assistant Secretary for Defense Trade, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2010–989 Filed 1–19–10; 8:45 am]

BILLING CODE 1710–25–P

DEPARTMENT OF STATE

[Public Notice 6876]

Culturally Significant Objects Imported for Exhibition Determinations: "The Sacred Made Real: Spanish Painting and Sculpture 1600–1700"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Sacred Made Real: Spanish Painting and Sculpture 1600–1700," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about February 28, 2010, until on or about May 31, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 12, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–986 Filed 1–19–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6866]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday February 2, 2010, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the fourteenth Session of the International Maritime Organization (IMO) Subcommittee on Bulk Liquids and Gases (BLG) to be held at the IMO Headquarters, United Kingdom, from February 8 to February 12, 2010.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance, in that this advisory committee meeting must be held on February 2nd in order to prepare for the IMO Subcommittee meeting to be convened on February 8th.

The primary matters to be considered include:

—Adoption of the agenda.
—Decisions of other IMO bodies.
—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments.
—Application of the requirements for the carriage of bio-fuels and bio-fuel blends.
—Development of guidelines and other documents for uniform implementation of the 2004 BWM Convention.
—Development of provisions for gas-fuelled ships.
—Casualty analysis.
—Consideration of IACS unified interpretations.
—Development of international measures for minimizing the transfer of invasive aquatic species through bio-fouling of ships.
—Revision of the IGC Code.
—Safety requirements for natural gas hydrate pellet carriers.
—Review of relevant non-mandatory instruments as a consequence of the amended MARPOL Annex VI and the NO_X Technical Code.
—Revision of the Recommendations for entering enclosed spaces aboard ships.
—Work programme and agenda for BLG 15.
—Election of Chairman and Vice-Chairman for 2011.
—Any other business.
—Report to the Committees.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator, Mr. Thomas Felleisen, by e-mail at *Thomas.J.Felleisen@uscg.mil,* by phone at (202) 372–1424, by fax at (202) 372–1926, or in writing at Commandant (CG–5223), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126, not later than January 26, 2010, 7 days prior to the meeting. A member of the public requesting reasonable accommodation should also make such request prior to January 26, 2010. Requests made after January 26, 2010 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building.

The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

Dated: January 12, 2009.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–995 Filed 1–19–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Number DOT–OST–2009–0294]

Request for OMB Clearance of an Information Collection Renewal

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU), invites public comments regarding the Department of Transportation's intention to request the Office of Management and Budget's (OMB) approval to renew an information collection. On November 19, 2009, OSDBU published a **Federal Register** Notice with a 60-day comment period, (74 FR 60012) Docket # DOT–OST–2009–0294. The collection is in regards to the Disadvantaged Business Enterprise American Recovery and Reinvestment Act Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP) application form. The notice was to inform the public of OSDBU's intention to extend the approved information collection. The continuation of the collection is necessary to determine the applicant's eligibility to approve or deny a bond fee reimbursement. As of January 12, 2010, OSDBU has not received any comments in response to the 60-day notice. We are required to publish this notice in the Federal Register by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted by February 25, 2010.

ADDRESSES: You may submit a comment to DMS Docket Number DOT–OST–2010–0294 through one of the following methods:

Web site: http://www.regulations.gov. Instructions for submitting comments on *http://www.regulations.gov* can be found at *http://docketsinfo.dot.gov/.*

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001.

Hand Delivery: Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All comments must include the agency name and DMS Docket Number, DOT–OST–2010–0294. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. The comments provided to a Federal Department or Agency through *http://www.regulations.gov* are collected voluntarily and may be publicly disclosed in a rulemaking docket or on the Internet. All comments received into any of our dockets are viewable by the public, including the name of the individual that submitted the comment (or signed the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement, published in the **Federal Register,** may be viewed on *http://www.regulations.gov.*

Instructions: For access to the docket or to read background documents or comments, go to *www.regulations.gov* at any time or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 a.m., Monday through Friday except Federal holidays.

To obtain confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on Docket DOT–OST–2010–0294." The Docket Clerk will date stamp the postcard prior and return it via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT.

Comments: We particularly request your comments on the: (1) accuracy of the estimated burden; (2) ways to enhance the quality, usefulness, and clarity of the collected information and; (3) ways to minimize the collection burden without reducing the quality of the information collected, including additional use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nancy Strine, Manager Financial Assistance Division, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W56–448, Washington, DC 20590. *Telephone:* 202–366–1930. *Fax Number:* 202–366–7228. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Estimate of burden hours for information requested:

Respondents: Certified Disadvantaged Business Enterprises (DBEs) that are pursuing, in the process, or have obtained contracts on ARRA transportation infrastructure projects. US DOT/OSDBU spoke to the SBA Surety Bond Guarantee Program personnel and a representative of the Surety and Fidelity Association of America (SFAA) who represents the small and emerging businesses to obtain the required estimates. The average bond for a small and emerging business or DBE is between $250,000 and $500,000. To calculate the universe US DOT/OSDBU can serve, an average bond is estimated to be $350,000. The Bonding Premium Fee charged by the Sureties is a range of 2 to 3% of the total bond, so using an average premium of 2.5% on a $350,000 bond the DBE would pay $8,750. The SBA Surety Guarantee Bond Program Principal Fee is currently set to .729% of the contract price, or bond amount. For a $350,000 bond, the SBA principal fee is $2,551. The average amount of financial assistance is $11,300.00 per DBE on one application, submittal to include both eligible fees. Using these estimates, the number of DBEs that US DOT/OSDBU can assist with $20 million is approximately 1,770.

Form: U.S. Disadvantaged Business Enterprise (DBE) American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program DOT Form F4504.

Respondents: 1770.

Frequency: Once.

Estimated Average Burden per Response: 2 hours.

Estimated Total Annual Burden Hours: 3540 hours.

OMB Approval No: OMB Control Number: 2105–0562.

Title: U.S Disadvantaged Business Enterprise (DBE) American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program DOT Form F4504.

Type of Review: Renewal.

1. *Needs and Uses:* The information collected will be from a DBE working on transportation infrastructure ARRA funded project. Under the DBE ARRA BAP program, DBEs performing on a transportation and infrastructure projects receiving ARRA funding assistance from any DOT mode of transportation such as Federal Highway

Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Maritime Administration (MARAD) will receive financial bonding assistance in the form of bonding fee cost reimbursement. This provision is applicable to a subcontract or prime contract at any tier in the construction project. Under this program DOT will directly reimburse DBEs the premiums paid to the surety company for performance, payment or bid/proposal bonds. The range of the premium fee is between 1–3% of the total bond amount. In the event the DBE also obtains a bond guarantee from Small Business Administration's (SBA) Surety Bond Guarantee Program (SBGP), the DOT will also reimburse the DBE for the small business concern (principal) fee of .729% of the contract price. The information collected will be used by DOT OSDBU to verify eligibility, including whether the applicant is a current certified DBE.

2. *Burden Statement:* This collection is for DBEs working on transportation infrastructure ARRA funded project. DBEs are small businesses. Efforts have been made to simplify the application form, keeping it to one page with three page instructions to assist the DBE to submit a complete application package to expedite reimbursement and minimize burden. In addition a sample letter to show how to indicate the federal project number is included. Applicants will be able to find further guidance at *http://www.dot.gov/recovery/ost/*. A coordinated effort has been made with the DOT Operating Administrations to minimize duplicative reporting. OSDBU's intent is to give this subsidy reimbursement fee to the DBEs trying to obtain surety bonding to assist DBEs to become more competitive and perform on more transportation infrastructure projects receiving ARRA funding assistance from any DOT mode of transportation and minimize cash flow difficulties. Several applicant we have spoken to since August 28, 2009 (program launch date) has told us the application is self explanatory and they have not had any difficulties in filling it out or understanding the content and requirements.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2010–984 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 2, 2009

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–1997–2155.

Date Filed: December 2, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 23, 2009.

Description: Application of Arctic Transportation Systems, Inc. requesting reissuance of its certificate of public convenience and necessity in the name of Ryan Air, Inc.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–933 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Passenger Origin-Destination Survey Report

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 16, 2009 (74 FR 59018–59019).

DATES: Written comments should be submitted by February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E34–409, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or E-mail *bernard.stankus@dot.gov*.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0001

Title: Passenger Origin-Destination Survey Report.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers that provide scheduled passenger service.

Number of Respondents: 35.

Total Number of Annual Responses: 140.

Estimated Time per Response: 240 hours.

Total Annual Burden: 33,600.

Needs and Uses: Survey data are used in monitoring the airline industry, negotiating international agreements, reviewing requests for the grant of anti-trust immunity for air carrier alliance agreements, selecting new international routes, selecting U.S. carriers to operate limited entry foreign routes, and modeling the spread of contagious diseases. The Passenger Origin-Destination Survey Report is the only aviation data collection by DOT where the air carriers report the true origins and destinations of passengers' flight itineraries. The Department does have another aviation data collection (T–100) which (1) gives passenger totals for city-pairs served on a nonstop basis and (2) market totals for passengers traveling on a single flight number. If the passenger travels on multiple flight numbers, a new market is recorded for each change in flight number.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under

this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. 2010–981 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Part 249, Preservation of Records

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 16, 2009 (74 FR 59018).

DATES: Written comments should be submitted by February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room E34–409, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or E-MAIL *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0006

Title: Preservation of Air carrier Records—14 CFR Part 249.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers and charter operators.

Number of Respondents: 90 certificated air carriers and 300 charter operators.

Estimated Time per Response: 3 hours per certificated air carrier. 1 hour per charter operator.

Total Annual Burden: 570 hours.

Needs and Uses: Part 249 requires the retention of records such as: general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and ledgers, subsidy records documenting underlying financial and statistical reports to DOT, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, the carrier may be required to retain the document for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that we ensure that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of the carrier submissions would be impaired, since the data could not be verified to the source on a test basis.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are invited on: whether the proposed record retention requirements are necessary for the proper performance of the functions of the Department. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Anne Suissa,

Director, Office of Airline Information.

[FR Doc. 2010–983 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0005–N–1]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting

public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 22, 2010.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0526." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kimberly.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Control of Alcohol and Drug Use in Railroad Operations.

OMB Control Number: 2130–0526.

Abstract: The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information—evidence of unauthorized alcohol or drug use—is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Form Number(s): FRA F 6180.73, 6180.74, 6180.94A, 61880.94B.

Affected Public: Businesses.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.7—Waivers	100,000 employees	2 letters	2 hours	4
219.9.(b)(2)—Responsibility for compliance	450 railroads	2 requests	1 hour	2
219.9 (c)(2)—Responsibility for compliance	450 railroads	10 contracts/docs.	2 hours	20
219.11(d)—Gen'l conditions for chemical tests	450 railroads	30 forms	2 minutes	1
219.11 (g) & 219. 301 (c)(2)(ii)—Training—Alcohol and Drug—Programs : New Railroads.	5 railroads	5 programs	3 hours	15
—Training	50 railroads	50 training class	3 hours	150
219.23 (d)—Notice to Employee Organizations	5 railroads	5 notices	1 hour	5
219.104/219.107—Removal from Covered Svc.	450 railroads	500 form letters	2 minutes	17
—Hearing Procedures	450 railroads	50 requests	2 minutes	2
219.201 (c) Good Faith Determination	450 railroads	2 reports	30 minutes	1
219..203/207/209—Notifications by Phone to FRA.	450 railroads	104 phone calls	10 minutes	17
219.205—Sample Collection and Handling	450 railroads	400 forms	15 minutes	100
—Form covering accidents/incidents	450 railroads	100 forms	10 minutes	17
219.209 (a)—Reports of Tests and Refusals	450 railroads	80 phone rpts.	2 minutes	3
219.209 (c)—Records—Tests promptly admin.	450 railroads	40 records	30 minutes	20
219.211 (b)—Analysis and follow-up—MRO	450 railroads	8 reports	15 minutes	2
219.401/403/405—Voluntary referral and Co-worker report policies.	5 railroads	5 report policies	20 hours	100
219.405 (c)(1)—Report by Co-worker	450 railroads	450 reports	5 minutes	38

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
219.403/405—SAP Counselor Evaluation	450 railroads	700 reports	30 minutes	350
219.601 (a)—RR Random Drug Testing Programs.	5 railroads	5 programs	1 hour	5
—Amendments	450 railroads	20 amendments	1 hour	20
219.601 (b)(1)—Random Selection Proc.—Drug	450 railroads	5,400 documents	4 hours	21,600
219.601 (b)(4/;219.601 (d)—Notices to Employees.	5 railroads	100 notices	.5 minute	1
—New Railroads	5 railroads	5 notices	10 hours	50
—Employee Notices—Tests	450 railroads	25,000 notices	1 minute	417
219.603 (a)—Specimen Security—Notice By Employee Asking to be Excused from Urine Testing.	20,000 employees	20 excuse doc.	15 minutes	5
219.607(a)—RR Random Alcohol Testing Programs.	5 railroads	5 programs	8 hours	40
—Amendments to Approved Program	450 railroads	20 amendments	1 hour	20
219.901/903—Retention of Breath Alcohol Testing Records; Retention of Urine Drug Testing.	450 railroads	100,500 records	5 minutes	8,375
—Summary Report of Breath Alcohol/Drug Test	450 railroads	200 reports	2 hours	400

Respondent Universe: 450 railroads.

Frequency of Submission: On occasion.

Total Responses: 133,818.

Estimated Total Annual Burden: 31,797 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 13, 2010.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2010–931 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on State Highway 99 (Segment F–2) in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Grand Parkway (State Highway 99) Segment F–2, from State Highway 249 to Interstate Highway 45 (I–45) in Harris County, Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 19, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Punske, P.E., District Engineer, District B (South), Federal Highway Administration, 300 East 8th Street, Room 826 Austin, Texas 78701; *telephone:* (512) 536–5960; *e-mail: gregory.punske@fhwa.dot.gov.* The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (central time) Monday through Friday. You may also contact Dianna Noble, P.E., Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704; *telephone:* (512) 416–2734; *e-mail: dnoble@dot.state.tx.us.* The Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: Grand Parkway (State Highway 99) Segment F–2 from State Highway 249 to I–45 in Harris County; FHWA Project Reference Number: FHWA–TX–EIS–03–02–F. The project will be a 19.3 km (12 mi) long, four-lane controlled access toll road with intermittent frontage roads, grade-separated intersections with exit and entrance ramps at five intersecting roadways, and elevated directional interchanges at State Highway 99 and State Highway 249 and at State Highway 99 and I–45. It will begin in northwestern Harris County at State Highway 249 near Boudreaux Road. It will then proceed northeast through Harris County and end at I–45 north of Spring Stuebner Road. The purpose of the project is to efficiently link the suburban communities and major roadways, enhance mobility and safety, and respond to economic growth. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on July 2, 2008, in the FHWA Record of Decision (ROD) issued on December 31, 2009, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the Grand Parkway Association Web site at *http://www.grandpky.com/segments/f-2/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and, Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470]; Archaeological and Historical Preservation Act [16 U.S.C. 469].

6. *Social and Economic:* Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1342]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11514 Protection and Enhancement of Environmental Quality.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: January 4, 2010.

Gregory S. Punske,

District Engineer, Austin.

[FR Doc. 2010–938 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–62]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before February 9, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1058 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Ralen Gao, (202) 267–3168, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 14, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–1058.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.981(a)(3).

Description of Relief Sought: The petitioner seeks relief from the requirements of fuel-tank structural lightning protection for the Boeing 747–8/8F model airplane.

[FR Doc. 2010–927 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–55]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before February 9, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1203 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between

9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Brenda D. Sexton, Transportation Industry Analyst, Office of Rulemaking, Aircraft and Airports Rules Division, 800 Independence Ave., SW., Room 814, Washington, DC 20591; telephone (202) 267–3664; E-mail *brenda.sexton@faa.gov*.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 14, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–1203.

Petitioner: Sikorsky Aircraft Corporation.

Section of 14 CFR Affected: 14 CFR 36 Appendix H, § 36.3(c)(2).

Description of Relief Sought: To permit Sikorsky Aircraft Corporation to use a non-constant climb angle reference takeoff flight profile, consisting of an initial straight-line climb segment at the higher rotation speed (Nr) followed by a curved climb segment during Nr transition and a final straight-line climb segment at the lower Nr, for noise certification tests of its S76–D helicopter.

[FR Doc. 2010–932 Filed 1–19–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), of a time change for a previously scheduled meeting held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on February 2, 2010. The meeting of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities, Industry and Financial Markets Association, was previously scheduled to start at 8:30 a.m. The new start time for the meeting shall be 8 a.m.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: January 12, 2010.

Fred Pietrangeli,

Deputy Director, Office of Debt Management.

[FR Doc. 2010–881 Filed 1–19–10; 8:45 am]

BILLING CODE 4810–25–M

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—February 4, 2010, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Daniel M. Slane, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 4, 2010, to address "China's Activities in Southeast Asia and the Implications on U.S. Interests."

Background

This is the first public hearing the Commission will hold during its 2010 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The February 4 hearing will examine the political, economic, and security aspects of China's activities in Southeast Asia, China and regional forums, and their implications on U.S. interests.

The February 4 hearing will be Co-chaired by Vice Chairman Carolyn Bartholomew and Commissioner Larry M. Wortzel, PhD.

Any interested party may file a written statement by February 4, 2010, by mailing to the contact below. On February 4, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web Site *http://www.uscc.gov.*

DATE AND TIME: Thursday, February 4, 2010, 8:45 a.m. to 3:30 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web Site at *http://www.uscc.gov* as soon as available.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Public Law 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: January 14, 2010.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2010–969 Filed 1–19–10; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Wednesday,
January 20, 2010

Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 3, 4, et al.

Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 5, 10, 140, 145, 147, 160, and 166

RIN 3038–AC61

Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to adopt a comprehensive regulatory scheme ("Proposal") to implement the CFTC Reauthorization Act of 2008 ("CRA") [1] with respect to off-exchange transactions in foreign currency with members of the retail public (*i.e.,* "retail forex transactions"). The Commodity Exchange Act, as amended by the CRA, generally provides that the Commission's jurisdiction extends to contracts of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange), and to certain leveraged or margined contracts in foreign currency that are offered to or entered into with retail customers. The Commission is proposing a scheme that would put in place requirements for, among other things, registration, disclosure, recordkeeping, financial reporting, minimum capital, and other operational standards, based on both the CFTC's existing regulations for commodity interest transactions and commodity interest intermediaries, as well as rules of the National Futures Association ("NFA") that are already existing with respect to retail forex transactions offered by NFA's members. Additionally, the Proposal would amend existing regulations as needed to clarify their application to, and inclusion in, the new regulatory scheme for retail forex.

DATES: Comments must be received on or before March 22, 2010.

ADDRESSES: You may submit comments, identified by RIN 3038–AC61, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include "Regulation of Retail Forex" in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as Mail above.

All comments received will be posted without change to *http://www.cftc.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For information regarding financial and related reporting requirements, contact: Thomas Smith, Chief Accountant and Deputy Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. *Telephone number:* 202–418–5495; *facsimile number:* 202–418–5547; and *electronic mail: tsmith@cftc.gov.* Jennifer Bauer, Special Counsel, Division of Clearing and Intermediary Oversight, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. *Telephone number:* 202–418–5472; *facsimile number:* 202–418–5547; and *electronic mail: jbauer@cftc.gov.*

For all other information contact: William Penner, Deputy Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. *Telephone number:* 202–418–5450; *facsimile number:* 202–418–5547; and *electronic mail: wpenner@cftc.gov.* Christopher Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. *Telephone number* (202) 418–5450; *facsimile number:* 202–418–5547; and *electronic mail: ccummings@cftc.gov.*

Peter Sanchez, Special Counsel, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. *Telephone number* (202) 418–5450; *facsimile number:* 202–418–5547; and *electronic mail: psanchez@cftc.gov.*

SUPPLEMENTARY INFORMATION: The CRA provides the Commission with broad authority to "make, promulgate and enforce such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions of [the Commodity Exchange] Act" in connection with off-exchange foreign currency futures, options, and options on futures, as well as leveraged off-exchange contracts offered to or entered into with retail customers.[2] The Commission is given similarly broad authority to promulgate and enforce rules regarding registration of persons who solicit, exercise discretionary trading authority or operate or solicit funds in connection with any of these types of transactions.[3]

Pursuant to this authority, the Commission is proposing a scheme that would put in place requirements for, among other things, registration, disclosure, recordkeeping, financial reporting, minimum capital, and other operational standards, based on both the CFTC's existing regulations for commodity interest transactions and commodity interest intermediaries, as well as rules of the National Futures Association ("NFA") that are already existing with respect to retail forex transactions offered by NFA's members.

Subject to certain exceptions (*e.g.,* for certain regulated financial intermediaries not under the Commission's jurisdiction as established in the CRA), the Proposal would require persons offering to be or acting as counterparties to retail forex transactions but not primarily or substantially engaged in the exchange traded futures business, to register as retail foreign exchange dealers ("RFEDs") with the CFTC. Registered futures commission merchants ("FCMs") that are "primarily or substantially" (as defined in the Proposal) engaged in the activities set forth in the Act's definition of an FCM would be permitted to engage in retail forex transactions without also registering as RFEDs.

The Proposal would further require certain entities other than RFEDs and FCMs that intermediate retail forex transactions to register with the Commission as introducing brokers ("IBs"), commodity trading advisors ("CTAs"), commodity pool operators ("CPOs"), or associated persons ("APs") of such entities, as appropriate, and to be subject to the Act and regulations applicable to that registrant category. In addition, the Proposal would require any IB that introduces retail forex transactions to an RFED or FCM to be guaranteed by that RFED or FCM.

The Proposal would also implement the $20 million minimum net capital standard established in the CRA for registering as an RFED or offering retail forex transactions as an FCM; propose an additional volume-based minimum capital threshold calculated on the amount an FCM or RFED owes as counterparty to retail forex transactions; and require RFEDs or FCMs engaging in retail forex transactions to collect security deposits in a minimum amount in order to prudentially limit the leverage available to their retail

[1] Food, Conservation, and Energy Act of 2008, Pub. L. 110–246, 122 Stat. 1651, 2189–2204 (2008).

[2] *See,* 7 U.S.C. 2(c)(2)(B)(v) and 7 U.S.C. 2(c)(2)(C)(ii)(III).

[3] *See,* 7 U.S.C. 2(c)(2)(B)(iv)(III) and 7 U.S.C. 2(c)(2)(C)(iii)(III).

customers on such transactions at 10 to 1.

I. Background

A. The Commodity Futures Trading Commission Act of 1974

Congress created the Commission in 1974 as an independent agency with the mandate to regulate commodity futures and option markets in the United States by the enactment of the Commodity Futures Trading Commission Act of 1974.[4] While the bill was being considered, the Department of the Treasury ("Treasury") sent a letter to the Senate Committee with jurisdiction over the bill, expressing concerns that Treasury had regarding the effect that passage would have on the off-exchange foreign currency ("forex") market that existed at the time between large, institutional customers.[5] The letter contained proposed language for the bill which would have maintained the *status quo* for institutional off-exchange forex trading, leaving jurisdiction over on-exchange trading in futures and options contracts on forex with the newly-created Commission. The bill was subsequently amended to add the suggested language contained in Treasury's letter, which was intended to give the Commission jurisdiction over retail forex transactions and to exclude from the Commission's jurisdiction the off-exchange, institutional "interbank" market in foreign currencies. This language, which has come to be known as the "Treasury Amendment," provided that:

> Nothing in this Act shall be deemed to govern or in any way be applicable to transactions in foreign currency * * * unless such transactions involve the sale thereof for future delivery conducted on a board of trade.[6]

As is discussed below, over time, and on numerous occasions, the Commission and the courts have opined on the proper boundaries of this exclusion.

The Commission first addressed the possible scope of the Treasury Amendment with regard to off-exchange transactions in securities issued by the Government National Mortgage Association ("GNMA"). In an interpretive letter issued by the Commission's Office of General Counsel, Commission staff stated that the remarks by the Senate Committee were

> an expression that regulation by the Commission is unnecessary where there exists an informal market among institutional participants in transactions for future delivery in the specified financial instruments only so long as it is supervised by those agencies having regulatory responsibility over those participants. However, where that market is not supervised and where those transactions are conducted with participation by members of the general public, we do not understand the Committee to have intended that a regulatory gap should exist. In these circumstances, we believe the Commodity Exchange Act should be construed broadly to assure that the public interest will be protected by Commission regulation of those transactions.[7]

The scope of the exclusion, again with regard to off-exchange transactions in GNMA securities, was addressed by the U.S. Court of Appeals for the Seventh Circuit ("Seventh Circuit") when it determined that the Treasury Amendment did not exclude options on government securities from the Commission's authority.[8] Specifically, the court determined that although trading in GNMA securities was excluded from the Commission's jurisdiction, trading in options on such instruments was within the Commission's authority. As the court stated:

> From the legislative history, it is quite clear that the Treasury Amendment was adopted by Congress only to prevent dual regulation by the CFTC and bank regulatory agencies of the banks and other sophisticated institutions that ordinarily trade in financial instruments.[9]

Following that discussion, in 1985, the Commission issued a Statutory Interpretation concerning the Treasury Amendment that specifically dealt with forex.[10] Responding to reports that forex futures contracts were being offered to retail customers on an off-exchange basis, under the assumption that such transactions were excluded from the Commission's jurisdiction, the Commission reaffirmed and republished its views, as follows:

> [T]he Commission wishes to make very clear that any marketing to the general public of futures transactions in foreign currencies conducted outside the facilities of a contract market is strictly outside the scope of the [Treasury] Amendment. As a result, such an off-exchange offer or sale of futures contracts involving foreign currencies is unlawful under section 4(a) of the Act, *7 U.S.C. 6(a) (1982).*[11]

The boundaries of the Treasury Amendment were again tested in *Salomon Forex* v. *Tauber*,[12] where a sophisticated investor sought to invalidate a multi-million dollar trading debt by claiming that the Treasury Amendment only excluded spot or forward forex transactions from the Commission's jurisdiction, and that trading in off-exchange futures and options were within the Commission's regulatory authority. If such transactions were deemed to be within the Commission's authority, then the transactions could only occur legally on an approved exchange. The Court determined that the Treasury Amendment excluded off-exchange trading in futures and options as well as "spot" and "forward" transactions from the Commission's authority, if it involved "sophisticated, large-scale foreign currency traders."[13] Although this holding has sometimes been misinterpreted to imply that off-exchange forex transactions with the general public were outside the Commission's jurisdiction, this holding concerned only large-scale traders and banks that made up the informal network of the foreign currency "interbank" market. Indeed, the Court itself noted that: "[t]his case does not involve mass marketing to small investors, which would appear to require trading through an exchange and our holding in no way implies that such marketing is exempt from the CEA."[14]

B. The Futures Trading Practices Act of 1992

The Futures Trading Practices Act of 1992 reorganized certain sections of the Commodity Exchange Act, 7 U.S.C. 1, *et seq.* (2000) (the "Act") and gave the Commission significant exemptive authority over the activities of a wide variety of persons, including FCMs, CTAs, and CPOs.

It was pursuant to this exemptive authority that the Commission addressed some aspects of the over-the-counter ("OTC") markets by adopting Part 35 of its regulations, which provides an exemption from regulation for certain swap agreements.[15] However, the Commission did not use its newly-

[4] Public Law 93–643, 88 Stat. 1389 (1974).

[5] *See,* Letter from Donald L.E. Ritger, Acting General Counsel, Department of the Treasury, to the Hon. Herman E. Talmadge (July 30, 1974), *reprinted at* 1974 U.S.C.C.A.N. 5843, 5887–89.

[6] *Id.* at 51.

[7] *Dealers in GNMA Certificates as a Board of Trade*, CFTC Staff Interpretive Letter No. 77–12, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,467 (Aug. 17, 1977).

[8] *Board of Trade of Chicago* v. *SEC*, 677 F. 2d 1137, 1154 (7th Cir. 1982), *vacated as moot,* 459 U.S. 1026 (1982).

[9] *Id.* at 1154.

[10] *Trading in Foreign Currencies for Future Delivery*, 50 FR 42983 (Oct. 23, 1985).

[11] *Id.* at 42985.

[12] 795 F. Supp. 768 (E.D. Va. 1992), *aff'd*, 8 F.3d 966 (4th Cir. 1993).

[13] *Id.* at 978.

[14] *Id.*

[15] *See, Exemption for Certain Swap Agreements*, 58 FR 5587 (Jan. 22, 1993).

granted exemptive authority in the context of retail forex.[16]

Rather, the Commission's efforts were directed to combating forex fraud activities through increased enforcement and public awareness. In response to increased fraud activity in the forex markets, the CFTC issued a fraud advisory to the public on March 30, 1998.[17] Notwithstanding the Commission's guidance and the legislative history, the ambiguity of the Treasury Amendment continued to present opportunities for defendants to challenge the Commission's jurisdiction in the courts, which consumed much of the Commission staff's time and resources.[18] Unfortunately, these challenges would persist until the adoption of the Commodity Futures Modernization Act of 2000 ("CFMA").[19]

Under the Treasury Amendment, retail forex transactions were excluded from the Commission's jurisdiction unless they were conducted on a "board of trade." This broad phrase caused further confusion when courts tried to interpret its meaning in order to delineate where the Commission's jurisdiction ended. The U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") relied on the language in the Senate Committee report to interpret the clause and believed that a proper reading of the Treasury Amendment excluded all off-exchange forex transactions—even with retail customers—from the Commission's jurisdiction and that the Commission only had jurisdiction over forex transactions traded on organized exchanges.[20] Other courts interpreting the same clause came to the conclusion that retail off-exchange forex transactions were within the Commission's jurisdiction and that the legislative history indicates that only large institutional trades were intended to be excluded from the Commission's oversight.[21]

C. The Commodity Futures Modernization Act of 2000

The CFMA amended the Act to clarify the jurisdiction of the Commission in the area of forex futures and options trading. For the first time, off-exchange retail forex transactions were expressly permitted, provided the counterparty was one of certain enumerated, regulated entities listed in the Act—*e.g.*, a registered FCM.[22] Transactions between certain institutional entities (eligible contract participants, or "ECPs"[23]) remained outside the Commission's jurisdiction altogether, based on several provisions of the Act and the Commission's regulations.[24] Shortly after the adoption of the CFMA, however, the Commission and the National Futures Association ("NFA")[25] noted that firms were registering as FCMs but not engaging in any exchange-traded activities. Rather, they were limiting their activities solely to retail forex. Additionally, the Commission noted that firms were registering as FCMs but conducting retail forex transactions through unregistered affiliates. Nothing in the Act or CFMA's amendments to the Act prohibited these "shell FCMs" from conducting business through their unregistered affiliates.

Although the CFMA provided some additional clarity for off-exchange retail forex transactions, it did not provide the Commission with rulemaking authority, and the Commission was thus required to provide guidance to allow participants to navigate the statute. For instance, Advisory 06–01 made clear that the Commission had jurisdiction over retail forex and only certain financial institutions that are enumerated in the Act could act as counterparties for retail customers in that regard. Similarly, Commission staff issued an Advisory in 2002 which sets out parameters for unlicensed intermediaries, such as pool operators, account managers and introducers, in retail forex transactions.[26] Most recently, in August 2007, Commission staff issued an Advisory that addressed the following areas: registration of associated persons ("APs") of FCMs, CPOs and introducing brokers ("IBs"); permissible unregistered forex affiliates; segregated funds; guaranteed IBs; combined account statements for forex and exchange-traded futures; and forex trading platforms.[27]

Following passage of the CFMA, legal challenges to the Commission's jurisdiction persisted and certain courts began to analyze the elements of a futures contract—the basis of the Commission's jurisdiction over off-exchange retail forex transactions—using new criteria. Some firms began offering to retail customers transactions that had the elements of futures contracts, but that were marketed as "spot" transactions. However, unlike true spot transactions where delivery is contemplated, these transactions were "rolled over" at expiration (generally within a few days) and carried forward indefinitely. These "rolling spot" or "look-alike" contracts were the basis of many forex fraud cases brought by the Commission. However, the Commission's ability to pursue fraud in this area was put in doubt by the decision of the Seventh Circuit in *CFTC* v. *Zelener*.[28] The *Zelener* case

[16] *See, e.g.,* Sections 4(c) and 4(d) of the Act, 7 U.S.C. 6(c) and 6(d).

[17] *Fraud Advisory from the CFTC: Foreign Currency Trading (Forex) Fraud, available at: http://www.cftc.gov/customerprotection/fraudawarenessandprevention/fraudadvisories/fraudadv_forex.html.* The Commission also issued brochures to alert customers to the possible scams involving forex fraud. *See CFTC Brochure on Forex Fraud, available at: http://www.cftc.gov/enf/enf-forex.htm* and *http://www.cftc.gov/stellent/groups/public/@cpfraudawarenessandprotection/documents/file/enfforexbrochure.pdf* (last visited Oct. 15, 2009).

[18] For instance, in *Dunn & Delta Consultants, Inc.* v. *CFTC,* 519 U.S. 465, 469 (1997), the U.S. Supreme Court held that foreign currency options were "transactions in foreign currency" within the meaning of the Treasury Amendment.

[19] Consolidated Appropriations Act of 2001, Public Law 106–554, App. E, 114 Stat. 2763 (2000), *available at* Commodity Futures Modernization Act of 2000, [2000–2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,433 (Dec. 21, 2000).

[20] *CFTC* v. *Frankwell Bullion Ltd.,* 99 F. 3d 299 (9th Cir. 1996).

[21] *See, CFTC* v. *Baragosh,* 278 F.3d 319 (4th Cir. 2002), which relied on the Conference Committee Report, not mentioned in *Frankwell Bullion,* to arrive at the opposite conclusion from the Ninth Circuit; *See also, CFTC* v. *Standard Forex,* No. CV–93–0088 (CPS). 1993 WL 809966 (E.D.N.Y. Aug. 9, 1993).

[22] *See*, 7 U.S.C. 2(c)(2)(B). Broadly stated, these entities included: (1) A financial institution; (2) a registered broker/dealer ("B–D") or FCM; (3) an insurance company; (4) a financial holding company; and (5) an investment bank holding company.

[23] Section 1(c)(12) of the Act defines the term "eligible contract participant." Entities classified as ECPs include financial institutions, insurance companies, certain commodity pools and individuals who meet certain asset thresholds. Non-ECPs, generally speaking, are retail customers.

[24] For example, Section 2(d) provides that most sections of the Act do not apply to derivative transactions between ECPs; Section 2(g) provides that most sections of the Act do not apply to swap transactions between ECPs; and the Part 35 safe harbor for swap agreements, which pre-dates the CFMA, provides another basis for excluding jurisdiction.

[25] NFA is a registered futures association, pursuant to Section 17(b) of the Act. It is an industry-wide, self-regulatory organization for the U.S. futures industry.

[26] *Division of Trading and Markets Advisory Concerning Foreign Currency Trading by Retail Customers, available at: http://www.cftc.gov/stellent/groups/public/@cpfraudawarenessandprotection/documents/file/forex_advisoryretailcustomers.pdf* (last visited Oct. 13, 2009).

[27] *Division of Clearing and Intermediary Oversight Advisory Concerning Retail Off-Exchange Foreign Currency Trading, available at: http://www.cftc.gov/stellent/groups/public/@cpfraudawarenessandprotection/documents/file/forex_advretailcustomers2007.pdf* (last updated August 30, 2007).

[28] *CFTC* v. *Zelener,* 373 F.3d 861 (7th Cir. 2004), *reh'g and reh'g en banc denied, CFTC* v. *Zelener,* 387 F.3d 624 (7th Cir. 2004). The U.S. Court of Appeals for the Sixth Circuit relied on *Zelener* when it issued its opinion in *CFTC* v. *Erskine,* 512 F.3d 309 (6th Cir. 2008), determining that the foreign currency contracts at issue were not futures contracts and upholding the district court's summary judgment against the Commission for lack of jurisdiction.

introduced a different framework for analyzing what constitutes a "spot" transaction and created confusion about the applicability of the CFMA to certain retail forex transactions. This departed from a line of previous non-forex cases that distinguished between futures and spot or forward contracts based on a multi-factor analysis of the economic elements in the contract.[29]

The court in *Zelener* determined that the contracts at issue were not off-exchange futures contracts, but rather contracts in the commodity itself, and thus excluded from the Commission's jurisdiction. The Seventh Circuit declined to rehear the case *en banc* and a split of authority among the circuits was created. Some courts continued to follow the traditional multifactor test while others followed the *Zelener* approach and only considered the language within the four corners of the contract.[30]

D. The Commodity Futures Trading Commission Reauthorization Act of 2008

The CRA [31] was intended, among other things, to further clarify the Commission's jurisdiction in the area of retail forex, particularly in light of the proliferation of look-alike forex transactions such as those in the *Zelener* and *Erskine* cases, and to give the Commission additional authority to regulate retail forex transactions and to register persons involved in intermediating these products with members of the public. To remedy the large number of fraud cases where jurisdiction had been questioned, the CRA gave the Commission jurisdiction over certain leveraged retail foreign exchange contracts without regard to whether it could prove the contracts were off-exchange futures contracts.[32] The CRA thus grants the Commission anti-fraud authority in leveraged retail forex transactions even if the transactions at issue are not futures or options. This allows the Commission to protect the public from fraud and provides a workable solution to the split in the decisions in the Federal appellate courts regarding when a so-called "spot" contract is a futures contract.

The CRA also created a new category of registrant, the retail foreign exchange dealer, or "RFED," and gave the Commission rulemaking authority over, and required registration of, intermediaries engaging in retail forex.[33] The CRA provided that RFEDs and these other intermediaries must be NFA members and must register with the Commission subject to such terms as the Commission may prescribe.[34] Among other requirements, the CRA established a $20 million minimum capital requirement for RFEDs and FCMs that offer retail forex.[35]

The grant of authority over look-alike forex contracts is very broad and is intended to encompass transactions that do not result in actual delivery, or for which no legitimate business purpose exists for the customer to enter into the transaction. It is not intended to interfere with the large, sophisticated interbank market or to place additional requirements on businesses with a need to engage in forex transactions in connection with their legitimate business activities.

The CRA further provides that look-alike forex contracts are subject to the CFTC's authority if they are offered on a leveraged or margined basis, or financed by the offeror, counterparty, or someone acting with the offeror or counterparty.[36] The Commission's authority, however, does not extend to securities, or to contracts that result in actual delivery within two days or that create an enforceable obligation to deliver between buyer and seller that have the ability to deliver or accept delivery in connection with their line of business.[37] Thus, the CRA charges the Commission with regulating speculative forms of retail forex trading, but excludes from the Commission's purview true spot transactions that have a legitimate business purpose or that result in actual delivery.

The Commission is proposing these regulations pursuant to separate authority provisions of the CRA with respect to the participants in the forex market and with respect to the transactions themselves. Off-exchange forex futures and options transactions are subject to numerous provisions of the Act including sections 4(b), 4b, 4c(b), 4o, 6(c) and 6(d),[38] 6c, 6d, 8(a), 13(a), 13(b), if they are offered or entered into by an FCM, an RFED, or an affiliate of an FCM that is not one of the otherwise regulated entities specified in the Act.[39] The same provisions apply to look-alike forex transactions.[40]

Notwithstanding the grant of authority with regard to certain sections of the Act specified above, the Commission has full rulemaking authority over the agreements, contracts or transactions in retail forex where "reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the] Act." [41] The Commission has full rulemaking authority over the futures and options transactions where such transactions are offered or entered into by FCMs, their affiliates or RFEDs; [42] and retains rulemaking authority with regard to look-alike transactions only where such transactions are offered or entered into by RFEDs.[43]

E. The Commission's Proposed Rules

In proposing the following rules, the Commission has endeavored, wherever possible, to apply the principles that have guided it in the regulation of on-exchange instruments. Thus, many of the concepts in the proposed rules will be familiar to industry participants and practitioners. There are, however, essential differences between the trading of futures contracts on designated contract markets ("DCMs") that are cleared through Commission registered derivatives clearing organizations ("DCOs") and off-exchange transactions between forex firms and retail customers. Many of the statutory and regulatory safeguards that are a critical feature of the trading and clearance of transactions in futures and options on futures on DCMs and DCOs, respectively, simply are not present in off-exchange retail forex transactions.

The Commission's proposed regulations are designed to deal with those differences, including the principal-to-principal nature of the transactions and the inherent conflicts of interest between the retail customer and the marketmaker/counterparty. In

[29] *See, e.g. CFTC* v. *Co Petro Mktg. Group, Inc.* 680 F.2d 573 (9th Cir. 1982).

[30] *See, e.g., CFTC* v. *UForex Consulting, LLC,* 551 F.Supp.2d 513 (W.D.La. 2008); *CFTC* v. *Erskine*, 512 F. 3d 309 (6th Cir. 2008).

[31] Food, Conservation, and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651. 2189–2204 (2008).

[32] *See*, 7 U.S.C. 2(c)(2)(C)(iv).

[33] Previously, firms serving as counterparties to retail forex typically registered as FCMs (if they were not included in any of the other permissible categories), even though they did not engage in exchange-traded futures business, and thus did not meet the statutory definition of an FCM.

[34] *See*, 7 U.S.C. (2)(c)(2)(B)(i)(II)(gg). The Commission plans on delegating the registration function for RFEDs to NFA, as is the case with the registration of FCMs, IBs, CTAs, CPOs and APs.

[35] *See*, 7 U.S.C. (2)(c)(2)(B)(ii).

[36] *See*, 7 U.S.C. 2(c)(2)(C)(i)(I)(bb).

[37] *See*, 7 U.S.C. 2(c)(2)(C)(i)(II)(bb)(AA); H.R. Rep. No. 110–627, at 979 (2008) (Conf. Rep.).

[38] Although the Commission had jurisdiction with regard to market manipulation in prior versions of the Act, the CRA removed that authority with regard to sections 6(c) and 6(d). All other cited sections remain in full effect.

[39] *See*, 7 U.S.C. (2)(c)(2)(B)(iii). In addition to the sections included in the CFMA for forex futures and options transactions, the CRA adds sections 4(b), 4o, 13(a), and 13(b).

[40] *See*, 7 U.S.C. (2)(c)(2)(C)(ii)(II).

[41] *See*, 7 U.S.C. 2(c)(2)(B)(iv)(III); 2(c)(2)(B)(v); (2)(c)(2)(C)(ii)(III); (2)(c)(2)(C)(iii)(III).

[42] *See*, 7 U.S.C. (2)(c)(2)(B)(v).

[43] *See*, 7 U.S.C. (2)(c)(2)(C)(ii)(III).

the nine years since the passage of the CFMA, the Commission has observed a number of improper practices that have raised concern, among them solicitation fraud, a lack of transparency in the pricing and execution of transactions, unresponsiveness to customer complaints, and the targeting of unsophisticated, elderly, low net worth and other vulnerable individuals.[44]

In addition to the regulations explicitly mandated by the CRA—including new registration requirements[45] and enhanced financial requirements—the proposed regulations will require forex registrants to maintain records of customer complaints; require forex counterparties to guarantee the performance of all persons who introduce accounts to the counterparty; require counterparties to disclose, with the Risk Disclosure Statement, the percentage of profitable nondiscretionary forex customer accounts; and require forex counterparties to designate a chief compliance officer to be responsible for development and implementation of customer protection policies and procedures.

As noted above, the Commission believes that these additional requirements are militated both by the essential differences between on-exchange transactions and off-exchange retail forex transactions, and the history of fraudulent practices in this sector of the forex market.

II. Section-by-Section Analysis

A. Structure and Approach

The CRA requires the Commission to register and regulate specified persons who intermediate off-exchange retail forex transactions. In order to comply with this mandate, the Commission must adopt regulations providing for the registration of RFEDs and other off-exchange retail forex intermediaries not excluded from Commission jurisdiction, and must specify the financial, operational and other requirements applicable to persons so registered. To the extent practicable, the Commission has endeavored to assemble the new off-exchange retail forex provisions in a single new part of the Commission's regulations, proposed to be designated part 5.[46] The goal is to provide a single convenient location for regulations applicable to off-exchange retail forex transactions and intermediaries. Unfortunately, developing a completely self-contained part of the Commission's regulations that would contain all of the off-exchange retail forex regulations is not practicable because it has also been necessary to draft amendments to various provisions of existing regulations maintained in other parts of 17 CFR Chapter 1. Among the reasons for these proposed additional amendments are the following: (1) Some regulatory provisions of general application name the specific registration categories they affect, and do not presently refer to RFEDs; (2) persons registered under certain existing registration categories (*e.g.,* FCMs) will be able to engage in off-exchange retail forex transactions under those existing registrations, subject to additional requirements, and restating the requirements pertaining to those registration categories in part 5 would be unwieldy;[47] and (3) certain existing regulatory provisions that should apply to off-exchange retail forex transactions and to the persons engaging in them are worded in terms of on-exchange futures and commodity options transactions, and not in a way that would encompass off-exchange retail forex transactions.

B. Proposed Amendments to Existing Regulations

Many of the proposed amendments to regulations outside of proposed part 5 amount to merely adding references to off-exchange retail forex transactions, off-exchange retail forex customers and/or RFEDs to existing regulations.[48] Accordingly, those proposed amendments will not be separately discussed. Other proposed amendments, however, involve a substantive change to the existing regulation because the existing regulation must operate differently in the context of off-exchange retail forex trading.[49] These substantive changes are discussed below.

1. Part 1 of the Commission's Regulations—General Regulations

a. Regulation 1.1—Fraud in or in connection with transactions in foreign currency subject to the Commodity Exchange Act.

This existing provision is specific to off-exchange retail forex transactions. Consistent with the concept of a self-contained off-exchange retail forex part of the regulations, existing Regulation 1.1 is proposed to be deleted and its content to be incorporated into Regulation 5.2 of proposed part 5.

b. Regulation 1.3—Definitions.

The definition of "guarantee agreement" is proposed to be amended to take account of IBs who may be guaranteed by RFEDs.[50] The definition of "commodity interest" is proposed to be amended to include off-exchange retail forex transactions over which the Commission has jurisdiction by virtue of the CRA.[51] Including off-exchange retail forex transactions within the "commodity interest" definition permits a wide range of provisions, especially within part 4 of the Commission's regulations, to apply to such transactions without the need to separately revise each provision to expressly address off-exchange retail forex, as well as futures contracts and commodity options.[52]

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[44] Between December 2000 and September 2009, the Commission has filed 114 forex-related enforcement actions on behalf of more than 26,000 customers. Those efforts have thus far resulted in the award of approximately $476 million in restitution and disgorgement, and $576 million in civil monetary penalties. An overwhelming majority of these cases have involved solicitation fraud.

[45] The Commission's proposed regulations include registration requirements for all persons engaged in the solicitation or acceptance of orders for retail forex transactions involving non-ECPs, the exercise of discretionary trading authority in such transactions, or the operation or solicitation of funds for pooled investment vehicles in connection with such transactions. Accordingly, the proposed rules include requirements that such persons become registered as CTAs, CPOs or IBs, as appropriate. The Commission is aware that the statutory definitions of these entities do not anticipate persons engaged in off-exchange activities. The Commission has determined, however, that pursuant to its plenary power to regulate such off-exchange retail forex transactions in section 2(c) of the Act, it will entrust such transactions only to persons registered as CTAs, CPOs and IBs, inasmuch as these are categories of registrants with which the Commission and the public are already familiar. This will allow the Commission to regulate off-exchange retail forex transactions efficiently and effectively. For example, the proposed regulations would make use of the established standards for registration and denial of registration contained in the Act as well as the Commission's previous interpretations of these standards. *See* 41 FR 44560 at 44561–62 (Oct. 6, 1976).

[46] Former part 5 (Designation of and Continuing Compliance by Contract Markets) was removed and reserved. 66 FR 42256 (Aug. 10, 2001).

[47] For example, essentially replicating the text of part 4 (which concerns CPOs and CTAs) within the new part 5 in order to cover providers of forex trading advice and operators of pooled forex trading vehicles would have needlessly increased the volume of the Commission's regulations, when a simple incorporation of the same requirements by reference accomplishes the same purpose.

[48] *See,* proposed amendments to Regulations 1.4, 1.35, 1.36, 1.37, 1.40, 1.52, 1.65, 3.1, 3.4, 3.10, 3.12, 3.21, 3.30, 3.31, 3.33, 3.44, 3.45, 3.50, 3.60, 4.23, 4.25, 4.30, 4.33, 10.1, 160.1, 160.3, 160.4, 160.30 and 166.2.

[49] *See,* proposed amendments to Regulations 1.1, 1.3, 1.10, 1.46, 3.1, 4.7, 4.12, 4.13, 4.14, 4.24, 4.34 and 166.5. In several instances, staff took the opportunity of this review and proposed rulemaking to propose deletion of obsolete material that either refers to already deleted regulatory provisions or has become outdated due to the passage of time. *See* proposed amendments to Regulations 1.52, 3.12, 3.31 and 160.18.

[50] Regulation 1.3(nn).

[51] Regulation 1.3(yy).

[52] *See, e.g.,* Regulation 4.6 as well as various provisions of Regulations 4.22 (reporting to pool

c. Regulation 1.10—Financial reports of futures commission merchants and introducing brokers.

Proposed new provisions would require all IBs and all applicants for registration as IBs in connection with retail off-exchange forex transactions to enter into a guarantee agreement with an RFED or an FCM.[53] To date, those persons who have introduced off-exchange retail forex customers to counterparties have not been required to register as IBs, and fraudulent solicitation and sales practices have been commonplace. *See supra* note 46. The Commission believes that by requiring guarantee agreements between all off-exchange retail forex IBs and the FCM/RFED counterparties to which they introduce off-exchange retail forex customers, the counterparties will be forced to more carefully vet the persons who solicit business on their behalf and the practices those persons employ.

The Commission will be preparing a new Part C guarantee agreement to the Form 1–FR–IB, modeled on the guarantee agreement existing in Part B of Form 1–FR–IB, that will provide that FCMs and RFEDs that guarantee performance by an introducing broker that introduces off-exchange retail forex transactions will be jointly and severally liable for all obligations of the introducing broker under the Act and Commission regulations with respect to the solicitation of, and transactions involving, all retail forex customer accounts of the introducing broker entered into on or after the effective date of the guarantee agreement. The Commission believes that the guarantee requirement serves the public's interest in a marketplace where improper practices by IBs are discouraged while still permitting FCMs and RFEDs to make use of outside salespeople. An IB that is guaranteed by an FCM or RFED will not be subject to the minimum capital requirements set forth in Regulation 1.17(a)(1)(iii).

d. Regulation 1.46—Application and closing out of offsetting long and short positions.

Like FCMs engaging in on-exchange futures and option transactions under the existing regulation, RFEDs and FCMs engaging in off-exchange retail forex transactions would be required to close out offsetting long and short positions in an off-exchange retail forex customer's account. But unlike existing Regulation 1.46, the requirement on RFEDs and FCMs engaging in off-exchange retail forex transactions to close out offsetting positions would apply regardless of whether the off-exchange retail forex customer has instructed otherwise.[54] Also, unlike the existing provision for transactions in on-exchange futures and option contracts, no exception is proposed for omnibus accounts because they are not used in off-exchange retail forex trading. An RFED or FCM could, if permitted by the rules of a self-regulatory organization ("SRO") of which the RFED or FCM is a member, offset at the retail forex customer's request off-exchange retail forex transactions of the same size, if the retail forex customer holds other transactions of a different size, but the RFED or FCM would be required to offset a transaction against the oldest transaction of the same size.[55]

2. Part 4 of the Commission's Regulations—CPOs and CTAs

a. Regulation 4.7—Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

As proposed, in determining whether a person is a "qualified eligible person" ("QEP") the NFA-specified minimum security deposit for off-exchange retail forex transactions would be included in the calculation of the portfolio requirement.[56] Such amounts are roughly equivalent to exchange-specified initial margin and option premium. In addition, in order to treat RFEDs and FCMs comparably, RFEDs would be included among the persons that do not have to meet the portfolio requirement to be QEPs.[57]

b. Regulation 4.12—Exemption from provisions of part 4.

As proposed, the NFA-specified minimum security deposit for off-exchange retail forex transactions would be included among the amounts that cannot exceed 10 percent of the fair market value of a pool's assets in order for the operator to claim exemption under Regulation 4.12(b). Again, such amounts are roughly equivalent to on-exchange initial margin and option premiums.[58]

c. Regulation 4.13—Exemption from registration as a commodity pool operator.

As proposed, the NFA-specified minimum security deposit for off-exchange retail forex transactions would be included among the amounts that cannot exceed 5 percent of the liquidation value of the pool's portfolio in order for the operator to claim exemption from registration under Regulation 4.13(a)(3). Again, such amounts are roughly equivalent to initial margin and option premiums.[59]

d. Regulation 4.14—Exemption from registration as a commodity trading advisor.

As proposed, an RFED that provided trading advice solely in connection with its business as an RFED would be exempt from registration as a CTA. This is consistent with treating FCMs and RFEDs comparably, where appropriate.[60]

e. Regulations 4.24 and 4.34—General disclosures required for CPO and CTA Disclosure Documents.

As proposed, the prescribed risk disclosure language for the front of the Disclosure Document would be required to include language warning that off-exchange retail forex transactions may not be given the same preferential treatment as commodity customer claims under the Bankruptcy Code.[61] This warning is necessary because definitions for such terms as "commodity contract," "customer" and "customer property" in Subchapter IV of Chapter 7 of the Bankruptcy Code do not include or refer to off-exchange transactions, generally, or to off-exchange retail forex transactions or customers engaged in such transaction, specifically.[62]

3. Part 166 of the Commission's Regulations—Customer Protection Rules

a. Section 166.5—Dispute settlement procedures.

As proposed, the section of the Commission's customer protection regulations dealing with dispute settlement procedures would be amended to expressly apply where a claim or grievance arises out of a retail forex transaction and the defined term customer would be amended to include

participants), 4.23 and 4.33 (recordkeeping), and 4.24 and 4.34 (required disclosures).

[53] Regulations 1.10(a)(4), 1.10(j)(3), 1.10(j)(9)(i)(A)(*2*) and 1.10(j)(9)(i)(B)(*2*). *See also,* Proposed Regulation 5.18(h).

[54] NFA's experience supports the conclusion that keeping open long and short positions in a retail forex customer's account removes the opportunity for the customer to profit on the transactions, increases the fees paid by the customer and invites abuse.

[55] Regulation 1.46(a)(2).

[56] Regulation 4.7(a)(1)(v)(B).

[57] Regulation 4.7(a)(2)(i)(B).

[58] Regulation 4.12(b)(i)(C).

[59] Regulation 4.13(a)(3)(ii).

[60] Regulation 4.14(a)(7)(ii). As noted in the Conference Report that accompanied the CRA, "To the extent their risk profiles are similar, the managers intend for FCMs and RFEDs to be regulated substantially equivalently in terms of their off-exchange retail foreign currency business." H.R. Rep. No. 110–627, at 980 (2008) (Conf. Rep.). The Conference Report is available via the Internet on the CFTC's website.

[61] Regulations 4.24(b) and 4.34(b).

[62] 11 U.S.C. 761 *et seq.*

a retail forex customer.[63] The existing text could be read to exclude customer claims arising out of retail forex transactions from coverage under Regulation 166.5.

C. New Part 5

As noted earlier, the proposed new part 5 to the Commission's regulations is intended to permit, as much as possible, reference to a single portion of the regulations for matters concerning off-exchange retail forex. Although it has been necessary to make changes to provisions elsewhere in the regulations, the Commission believes that in most cases, initial reference to part 5 should be sufficient to resolve questions (or to direct the reader by cross-reference to the appropriate provision elsewhere).

1. Proposed Regulation 5.1—Definitions

Proposed part 5 begins with a set of definitions of terms specific to off-exchange retail forex and to the regulatory requirements that apply to off-exchange retail forex. "Retail forex transaction" is defined by reference to the description in sections 2(c)(2)(B) and 2(c)(2)(C) of the Act. The proposed definition expressly excludes futures and commodity option contracts traded on a designated contract market or derivatives transaction execution facility.[64] "Retail foreign exchange dealer" is defined as anyone who offers to be or who is a counterparty to a retail forex transaction, except for those persons excluded from the definition by the CRA.[65] In order to apply the IB, CPO, CTA and AP registration and other requirements to analogous retail forex market participants, notwithstanding that statutory and regulatory definitions of the identifying terms do not necessarily comprehend involvement in retail forex trading, the terms are separately defined for the purposes of part 5.[66] "Affiliated person of a futures commission merchant" (a term not previously defined in the Commission's regulations) and an AP of such a person are defined by reference to section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act.[67] "Primarily or substantially" is defined for use in determining whether a registered FCM is primarily or substantially engaged in FCM activities, such that it need not also register as an RFED in order to conduct retail forex business.[68] Certain terms used in determining the financial and reporting requirements applicable to persons engaged in retail forex business are also defined in Regulation 5.1 to clarify their use elsewhere in part 5.[69]

2. Proposed Regulation 5.2—Prohibited Transactions: Antifraud

As noted above, under the proposal, existing Regulation 1.1 prohibiting fraud in connection with foreign currency transactions would be removed and replaced with new Regulation 5.2, which, in addition to prohibiting fraudulent conduct in connection with retail forex transactions, now prohibits anyone from acting as the counterparty for a retail forex transaction in an account for which that person has discretionary trading authority.

3. Proposed Regulation 5.3—Registration

The CRA amends the Act to require that certain intermediaries for forex futures and options and for look-alike contracts (*i.e.,* those at issue in *Zelener*) register in such capacity as the Commission shall determine and become members of a registered futures association.[70] The Commission has determined that the appropriate registration categories for those intermediaries are as follows. Persons who solicit or accept orders for an RFED, an FCM, or an affiliate of an FCM should be registered as IBs. Persons who exercise discretionary trading authority over accounts should be registered as CTAs. Persons who operate or solicit funds or property for a pooled investment vehicle should be registered as CPOs. Finally, associated persons of the foregoing should be registered as APs. The proposed regulations include provisions to implement this part of the CRA.

Prior to the passage of the CRA, many entities registered as FCMs solely to engage in retail forex transactions. The CRA provides that registered FCMs who currently trade retail forex may continue to do so as FCMs, or may be required to register as RFEDs, depending on their circumstances. A traditional FCM that is primarily or substantially engaged in exchange-traded futures business may continue to engage in retail forex as an FCM, and need not register as an RFED.[71] Currently registered FCMs who solely trade in retail forex, or FCMs who are not primarily or substantially dealing in exchange-traded futures, will be required to register as RFEDs. Because there will be two categories of registrants competing for these customers, the stated Congressional intent is that an entity should not be advantaged or disadvantaged as a result of registering as an RFED instead of an FCM.[72] The Commission has therefore endeavored to draft regulations that provide equivalent treatment of FCMs and RFEDs wherever possible.

The enactment of the CFMA permitted registered FCMs and certain of their unregistered affiliates to act as counterparties to retail forex transactions, but it did not specifically require that intermediaries such as introducing brokers, account managers or pool operators be registered in order to engage in forex transactions with retail participants. This created problems when unregistered entities began soliciting retail customers. The lack of vetting by a regulatory agency or an SRO created a situation where members of the general public were being solicited by entities and persons regarding whom they were unable to obtain any background information. In some cases, persons banned from registering in the futures industry as a result of past misconduct were operating as unregistered intermediaries in retail forex transactions because of the lack of minimum requirements to operate in the forex business. Pursuant to the CRA, certain affiliates of FCMs may continue to be proper forex counterparties if the affiliated FCM makes and keeps the risk assessment records required in Section 4f(c)(2)(B) of the Act and the affiliate has at least $20 million in adjusted net capital.[73] However, under the proposed regulations, the affiliates will have to register in the appropriate capacity in order to serve as a counterparty.

Proposed Regulation 5.3 imposes the registration requirements called for by the CRA upon specified categories of persons intermediating retail forex transactions. RFEDs are required to register as such.[74] FCMs not "primarily or substantially" engaged in FCM business are required to register as RFEDs,[75] and FCM-affiliated persons that serve as retail forex counterparties are also required to register as RFEDs.[76] Persons introducing forex accounts are required to register as IBs.[77] Operators

[63] Regulations 166.5(a)(1) and (a)(2).

[64] *See,* proposed Regulation 5.1(m).

[65] *See,* proposed Regulation 5.1(h).

[66] *See,* proposed Regulations 5.1(d), (e) and (f).

[67] *See,* proposed Regulations 5.1(a) and (c).

[68] *See,* proposed Regulation 5.1(g)

[69] *See,* proposed Regulations 5.1(b), (i), (j), (k) and (l).

[70] *See,* 7 U.S.C. 2(c)(2)(B)(iv) and 2(c)(2)(C)(iii).

[71] The Commission is directed to determine, through notice and comment rulemaking such as this, what "primarily or substantially" means in this context. H.R. Rep. No. 110–627, at 980 (2008) (Conf. Rep.); *see also,* Proposed Regulation 5.1(g).

[72] *See,* H.R. Rep. No. 110–627, at 980 (2008) (Conf. Rep.).

[73] *See,* 7 U.S.C. 2(c)(2)(B)(i)(II)(cc)(BB).

[74] *See,* proposed Regulation 5.3(a)(6).

[75] *See,* proposed Regulation 5.3(a)(4).

[76] *See,* proposed Regulation 5.3(a)(1).

[77] *See,* proposed Regulation 5.3(a)(5).

of pooled investment vehicles that engage in retail forex transactions are required to register as CPOs, and persons providing forex trading advice are required to register as CTAs.[78] Finally, associated persons of all of the foregoing are required to register as APs.

The CRA's registration requirements do not apply to certain otherwise regulated entities (*e.g.,* broker-dealers), their associated persons, or persons who would be exempt from registration if they were engaging in such transactions on or subject to the rules of a contract market with regard to forex futures or options[79] or look-alike contracts.[80] This is consistent with the original intent of the Treasury Amendment that entities engaging in forex transactions should not be subject to regulation by multiple regulators concerning the same activity. Proposed Regulation 5.3 excludes from the registration requirement the persons specified in the CRA.

4. Proposed Regulation 5.4—Operative Requirements for CPOs and CTAs

Proposed Regulation 5.4 applies all of the disclosure, recordkeeping, reporting and other existing requirements currently applicable to CPOs and CTAs in the context of on-exchange futures and commodity option contracts to persons defined as, and required to register as, CPOs and CTAs because those persons operate pooled investment vehicles that engage in retail forex transactions or because they provide retail forex trading advice.

5. Proposed Regulation 5.5—Risk Disclosure by FCMs, RFEDs and IBs

Proposed Regulation 5.5 requires RFEDs, FCMs and IBs to provide retail forex customers with a risk disclosure statement similar to that currently required by Regulation 1.55, but tailored to address the risks, conflicts of interest and unique characteristics of retail forex trading. For example, the required risk disclosure statement would also be required to disclose the number of non-discretionary retail forex accounts maintained by an RFED or FCM, the percentage of such accounts that were profitable for each of the four most recent quarters, and a statement that past performance is not necessarily indicative of future results.[81]

Under Section 2(c) of the Act, the Commission's jurisdiction with regard to off-exchange forex transactions extends to transactions involving entities that are not eligible contract participants as defined in Section 1a of the Act (i.e., retail customers). These transactions serve no broad price discovery function, and the Commission believes both that the vast majority of retail customers who enter these transactions do so solely for speculative purposes, and that relatively few of these participants trade profitably. Whether or not this is actually the case, the Commission believes that disclosure of the percentage of profitable accounts maintained by RFEDs and FCMs engaging in off-exchange retail forex will provide the retail customer with vital information when deciding whether or not to engage in such transactions.

6. Proposed Regulations 5.6 and 5.7—Minimum Financial Requirements

Under proposed Regulation 5.7, RFEDs and FCMs engaging in retail forex trading are required to meet the minimum net capital requirements prescribed in the CRA.[82] Proposed Regulation 5.6 sets forth the "early warning" notification requirements pursuant to which RFEDs and FCMs engaging in retail forex trading are required to notify SROs and the Commission if an RFED or an FCM engaging in retail forex trading has experienced declines in capital, has discovered a material inadequacy in internal controls or has become undercapitalized.[83] Because there is no equivalent to the futures regime of strict segregation of customer funds in off-exchange retail foreign currency dealing, the notice requirement for RFEDs with respect to undersegregation is not included in the proposed regulation. However, a requirement has been proposed that an RFED or FCM engaging in off-exchange retail forex transactions give notice if it is holding liquid assets less than the aggregate retail forex obligation (as defined). The aggregate retail forex obligation is proposed to be the net obligation to all off-exchange retail foreign currency customers at all times (excluding deficit accounts).

The minimum net capital regulation for RFEDs and FCMs offering off-exchange retail forex is proposed based on the significantly higher minimum net capital level for RFEDs and FCMs offering retail forex established in the CRA. The Commission believes that the higher level of $20 million reflects Congressional intent to ensure that substantially undercapitalized "shell" FCM off-exchange retail forex dealers and their affiliates, from whom it may be impossible to recover funds in the event of customer claims, do not engage in off-exchange retail forex activity. The existing regulation for the calculation of FCM net capital has been proposed for the calculation of net capital for RFEDs and FCMs offering off-exchange retail forex, with the intent that an FCM offering retail forex should only have one calculation of its adjusted net capital. However, the CRA's higher dollar threshold of minimum capital required, $20 million, will apply, as well as an additional early warning requirement of 110%, resulting in a notice reporting net capital level of $22 million. The proposed early warning level of 110% is lower than the FCM early warning level of 150% due to the substantially higher minimum dollar threshold established in the CRA, which results in an adequate minimum early warning "buffer" of no less than $2 million.

An amount of minimum net capital in addition to the minimum $20 million is proposed to the extent that an FCM or RFED has a total retail forex obligation in excess of $10,000,000. After that threshold, as proposed the FCM or RFED must have net capital of no less than $20,000,000 plus five percent of the total retail forex obligation in excess of $10,000,000. This proposal is intended to address concerns that, although the capital level contained in the CRA is believed to be high at $20,000,000, at particularly high levels of retail customer obligations there should be commensurate increases in an entity's minimum required net capital. The NFA has enacted a similar requirement applicable to all its forex dealer members except those that only provide "straight through processing." The Commission's proposal has no exceptions for FCMs engaging in off-exchange retail forex or for RFEDs.

Under the existing net capital regulation for FCMs contained in Commission Regulation 1.17, an FCM that becomes undercapitalized must immediately cease business and transfer its customers' positions to another FCM, unless the Commission believes that it will be able to quickly remedy the situation, in which case the Commission may provide up to an additional 10 business days to return to compliance before ceasing business. Because the retail forex contracts at issue are not exchange-traded, and therefore, positions are not fungible among retail forex FCMs and RFEDs, should an RFED become undercapitalized, the

[78] *See,* proposed Regulations 5.3(a)(2) and 5.3(a)(3).

[79] *See,* 7 U.S.C. 2(c)(2)(B)(iv)(II).

[80] *See,* 7 U.S.C. 2(c)(2)(C)(iii)(II).

[81] *See,* proposed Regulation 5.5(e).

[82] Analogous to Regulation 1.17 for FCMs trading only futures and commodity options.

[83] The proposed requirement is analogous to existing Regulation 1.12 for FCMs that trade only on-exchange futures and commodity option contracts.

Commission proposes that it either liquidate or transfer all off-exchange retail forex accounts (with a transfer envisioned as a full novation of the retail forex contracts for such accounts by assignment and assumption of the contracts by another RFED or FCM) under the direction and supervision of the Commission or the entity's designated self-regulatory organization ("DSRO"). The same 10 business day period has been proposed for the Commission or DSRO to delay such liquidation or transfer if determined appropriate. The proposal requires the refund or transfer of all funds associated with off-exchange retail forex accounts contemporaneous with the liquidation or transfer. The possibility of an entity needing to refund all customers' accounts and liquidate all positions in such circumstances makes it necessary to include a proposal to require such entity to maintain liquid assets available equal to the amount owed to off-exchange retail forex customers.

Although not permissible to be counted as a liquid asset for fulfilling the requirement of Regulation 5.8, under the proposed net capital regulation, the unsecured receivable resulting from an RFED or FCM offsetting currency exposure with one of several enumerated parties (regulated financial intermediaries or foreign equivalents approved by NFA) will be treated as a current asset. The Commission proposes this, with the counterparty limitation, to balance an RFED's or FCM's need to hedge its net position from offering off-exchange retail forex with the concern that such receivables are collectible for net capital purposes. Without this proposed addition to the net capital calculation, RFEDs and FCMs would have to take a 100% capital charge for such unrealized gains. The Commission understands that NFA, under subparagraph (c) of its Section 11 Financial Requirements for Forex Dealer Members, has been permitting existing forex dealer members to not take such a charge to the extent the counterparty has been considered regulated and approved by NFA, and is not an affiliate of the Forex Dealer Member. Thus, the Commission proposes that a DSRO be afforded the continuing ability to assess the appropriateness of counterparties for this purpose going forward, while making explicit the ability of an entity to cover the net exposure without the burden of a 100% net capital charge being applied. Also, the existing net capital charge with respect to options has been applied to off-exchange retail forex transactions that are options. This net capital charge, with respect to the existing net capital regulation for FCMs, is derived from the SEC's net capital charges for options that are not options on futures. Because these retail forex transactions are, by nature, off-exchange transactions, the resulting charge under the SEC rule would be the charge for "unlisted" options. This charge is based on the notional transactional size of the option which may result in a very significant capital implication for retail forex transactions which are options. However, this result is consistent with the existing requirements for all off-exchange or unlisted foreign exchange options for existing FCMs and broker-dealers.

7. Proposed Regulation 5.8—Aggregate Retail Forex Assets

Proposed Regulation 5.8 requires RFEDs and FCMs engaging in retail forex transactions to compute the net credit balance resulting from combining all money, securities and property deposited by retail forex customers into their accounts, adjusted for realized and unrealized net profit or loss, and not including any accounts that contain net liquidating balances (the "retail forex obligation" of the RFED or FCM).[84] Under proposed Regulation 5.8(a) each RFED or FCM engaging in retail forex transactions is required to hold assets of the type permitted under Regulation 1.25 equal to the retail forex obligation. Such assets would have to be maintained at one or more qualifying institutions in the U.S., or in money center countries (as defined in Regulation 1.49) where such countries have agreements acceptable to NFA that authorize sharing account information with NFA.

The requirement to hold assets equal to the retail forex obligation is separate from the adjusted net capital requirement. In computing their adjusted net capital, pursuant to proposed Regulation 5.8(d), RFEDs and FCMs could not include assets held for purposes of complying with proposed Regulation 5.8(a) as current assets, or otherwise recording any property received from retail forex customers as an asset without recording a corresponding liability to such customers.

The requirement to maintain assets equal to or in excess of the retail forex obligation is intended to provide some degree of protection for customers in the absence of the protections afforded by the segregation of customer funds that is required in the context of futures and commodity options trading.[85] The Commission recognizes that the retail forex obligation is not an equivalent substitute for the segregated funds regime, which cannot be replicated in the context of off-exchange retail forex trading. Unlike segregation of customer funds deposited for futures trading, such amounts would not be provided any preferential treatment to unsecured creditors in a bankruptcy, and would not be held in separately titled accounts under the CEA. Because of the lack of bankruptcy preference with respect to the funds of retail forex customers held at FCMs or RFEDs, the Commission does not intend to propose a separation of funds requirement which may be misconstrued as being similar to the protections that are afforded to customers engaged in exchange-traded futures and options. As previously discussed, Regulation 5.8 has been proposed to ensure that RFEDs and FCMs hold liquid assets in appropriate jurisdictions should they be required to be refunded to customers or seized to compensate customers. NFA first established under Section 14 of its Financial Requirements its version of this requirement, due to its difficulty in ultimately obtaining any funds for restitution with respect to failures of forex dealers and cases of fraud. The proposal follows the NFA's rule in this regard while further requiring that the types of assets held to meet the requirement must also be of the kind and character permitted for the investments of futures customer funds under existing Commission Regulation 1.25. These types of assets are limited to generally liquid financial instruments, which the Commission believes to be an appropriate limitation, should it become necessary to liquidate retail forex accounts, transfer funds, or seize or freeze funds in the event of fraud.

8. Proposed Regulation 5.9—Security Deposits for Retail Forex Transactions

Proposed Regulation 5.9(a) would require each RFED and each FCM that engages in retail forex transactions, in advance of any such transaction, to collect from the retail forex customer a security deposit (in cash or in financial instruments that meet the requirements of Regulation 1.25) equal to ten percent of the notional value of the retail forex transaction, ten percent of the notional value of short retail forex options in addition to the premium received, or the full premium received for long options,

[84] Defined in proposed Regulation 5.1(l).

[85] The retail forex obligation is also a factor in one of the options for computation of the RFED's or FCM's net capital requirement. *See,* proposed Regulation 5.7(a)(1)(i)(B).

as the case may be. Pursuant to proposed Regulation 5.9(b), the RFED or FCM would be required to collect additional security deposit or to liquidate the retail forex customer's position if the amount of security deposit collected fails to meet the requirements of paragraph (a).

The extreme volatility of the foreign currency markets exposes retail forex customers to substantial risk. Forex dealers currently extend leverage to their customers at ratios of between 25:1 to 400:1 or higher, which allows customers to control contracts worth significantly more than their cash investment. Given these high leverage ratios, even minor fluctuations in currency rates can exponentially increase a customer's losses and gains. Even a small move against a customer's position can result in a significant loss. Under current practices, customer positions are usually closed out once the losses in an account exceed the initial investment. However, if, for any reason, the positions are not closed out at a zero balance, the customer could be liable for additional losses.

Customers also face counterparty risk, as there is no central counterparty for forex transactions. Customers may not know that customer funds held by a forex counterparty do not receive the bankruptcy protections applicable to funds held by an FCM engaged in on-exchange trading on the customers behalf.[86] Given the risks that inhere in the trading of off-exchange forex contracts by retail customers, the only funds that should be invested in the off-exchange retail forex market are those that the investor can afford to lose. The Commission's proposed regulation regarding security deposits is intended both to mitigate the risk to which customers are exposed and to provide some capital to cover customer funds held by a failing firm (albeit without the bankruptcy preference applicable to funds held in segregation for exchange-traded contracts). In determining the appropriate leverage or security deposit level to propose, the Commission considered current industry practices, as well as NFA's current leverage restrictions of 100 to 1 on major currencies and 25 to 1 on non-major currencies, and the proposal by the Financial Industry Regulatory Authority ("FINRA") to limit the maximum leverage on certain retail forex transactions offered by broker-dealers to 4 to 1.[87]

9. Proposed Regulations 5.10 and 5.11—Risk Assessment

Proposed Regulation 5.10 imposes risk assessment recordkeeping requirements, and Regulation 5.11 establishes risk assessment reporting requirements, for RFEDs. These sections are patterned on the corresponding existing requirements for FCMs in existing Regulations 1.14 and 1.15, because the same rationale behind risk assessment procedures for FCMs applies equally to RFEDs.

10. Proposed Regulation 5.12—Financial Reporting to Regulators

Proposed Regulation 5.12 requires applicants for registration as RFEDs to submit their applications for registration with a Form 1–FR–FCM, the same financial reporting form that FCMs are required to file, certified by an independent public accountant.[88] Registered RFEDs would be required to file Form 1–FR–FCM monthly and annually. In addition, RFEDs, like FCMs, when notified in writing by NFA or the Commission, would have to file Form 1–FR–FCM or such other financial information as NFA or the Commission may request at such other times as may be specified in the notice.[89] The proposed regulation for RFED financial reporting is intended to require the substantial equivalent of independent IB and FCM financial reporting to the Commission and DSROs, with certified financial reports required from independent auditors qualified under existing Commission Regulation 1.16 and similar reports on material inadequacies by such auditors. The existing reporting requirements as separately proposed to be amended for FCMs, including methods of receiving reports, determining fiscal year ends and permitting extensions of time to file, have been proposed for RFEDs.

11. Proposed Regulation 5.13—Reporting to Customers

RFEDs and FCMs engaging in retail forex transactions are required by proposed Regulation 5.13 to furnish each retail forex customer with monthly statements and confirmation statements in a manner comparable to that required of FCMs under Regulation 1.33. The Commission believes that proposed Regulation 5.13 has been drafted in such a manner as to make the required statements meaningful and useful to customers in light of the distinctive characteristics of retail forex transactions relative to exchange-traded futures and commodity option transactions. FCMs could combine their forex monthly and/or confirmation statements with statements they may otherwise be required by Regulation 1.33 to furnish, so long as the futures and commodity options information and the retail forex information are each properly identified as such. The proposed section also provides that the required statements can be furnished electronically with the customer's (revocable) consent, and RFEDs are required to keep copies of monthly and confirmation statements in accordance with the requirements of Regulation 1.31.

12. Proposed Regulation 5.14—Financial Recordkeeping

Proposed Regulation 5.14(a) requires RFEDs to keep the same ledgers or similar records as FCMs are required to keep under Regulation 1.18, showing transactions affecting assets, liabilities, income, expense and capital accounts, classified in the manner set forth in Form 1–FR–FCM, or in categories consistent with generally accepted accounting principles. Proposed Regulation 5.14(b) requires recordkeeping regarding net capital computations, comparable to existing Regulation 1.18(b) for FCMs.

13. Proposed Regulations 5.15 and 5.16—Unlawful Representations and Prohibitions of Guarantees Against Loss

As with CPOs and CTAs dealing only in futures and commodity options, RFEDs, FCMs, IBs, CPOs and CTAs subject to Part 5, as well as their principals and those who solicit for them, are prohibited by proposed Regulation 5.15 from representing that the Commission or the Federal government has sponsored, recommended or approved them in any

[86] As discussed above, an FCM holding customer funds for trading on-exchange futures contracts is required to have, at all times, in its possession and control, segregated property sufficient to pay all customers with credit balances, without deduction for customer debit balances (which must be made up from the FCM's own capital). In an FCM bankruptcy, customers share the segregated property pro rata in proportion to their claims, without any support from a compensation fund. *See, generally,* Part 190 of the Commission's Regulations, 17 CFR Part 190 (2009).

[87] NFA leverage rules are set forth in Section 12, "Security Deposits for Forex Transactions with FDMs", of the NFA rules. On June 4, 2009, FINRA submitted to the U.S. Securities and Exchange Commission a proposed rule change to adopt FINRA Rule 2380 to limit the leverage ratio offered by broker-dealers for certain forex transactions to be a maximum of 1.5:1. 74 FR 32022 (July 6, 2009). FINRA subsequently adopted 2 amendments to this proposal, the second of which revised the maximum leverage ratio from 1.5:1 to 4:1. *See* SR–FINRA–2009–40 available on FINRA's website at *http://www.finra.org/Industry/Regulation/RuleFilings/2009/P118864.*

[88] *See,* Regulation 1.10.

[89] *See,* Regulation 1.10(b)(4).

way.[90] RFEDs, FCMs and IBs are prohibited under proposed Regulation 5.16 from guaranteeing against or limiting customer losses, from failing to collect margin or security deposits, or from representing that they will do any of those things.[91] This prohibition does not prevent an RFED, FCM or IB from sharing in a loss resulting from error or mishandling of an order, and guarantees entered into prior to effectiveness of the prohibition will only be affected if an attempt is made to extend, modify or renew them.

14. Proposed Regulation 5.17—Authorization to Trade

Proposed Regulation 5.17 requires RFEDs, FCMs, IBs and their APs to have specific authorization by the customer before effecting a retail forex transaction. For the most part, proposed Regulation 5.17 follows existing Regulation 166.2 for on-exchange futures and commodity option transactions. The Commission believes that registrants acting as off-exchange retail forex counterparties should have to obtain authorization for each transaction like other registrants.

15. Proposed Regulation 5.18—Trading Standards

Proposed Regulation 5.18 contains provisions specific to retail forex transactions that were developed to prevent some of the deceptive or unfair practices identified by the Commission and NFA in recent years. Each retail forex counterparty[92] would be required to establish and enforce internal rules, procedures and controls: (1) To prevent "front running," where transactions in accounts of the retail forex counterparty or its related persons[93] are executed before a like customer order; (2) to establish settlement prices fairly and objectively; and (3) to record and maintain transaction records and make them available to customers (including time and price information, account records, trading platform price changes and volume, and any algorithm used to determine bid and ask prices). Paragraph (c) of the proposed Regulation prohibits a retail forex counterparty from disclosing that it holds another person's order unless disclosure is necessary for execution. Paragraphs (d) and (e) ensure that related persons of retail forex counterparties do not open accounts with other retail forex counterparties without the knowledge and authorization of the account surveillance personnel of the retail forex counterparties with which they are related. Paragraph (f) prohibits retail forex counterparties from: (1) Entering a retail forex transaction to be executed at a price that is not at or near prices at which other retail forex customers have executed transactions with the retail forex counterparty during the same time period unless done pursuant to NFA rules; (2) changing prices after execution unless pursuant to NFA rules; (3) providing a customer a new bid price that is higher (or lower) than previously without providing a new asked price that is higher (or lower) as well; and (4) establishing a new position for a customer (except to offset an existing position) if the retail forex counterparty holds one or more outstanding orders of other retail forex customers for the same currency pair at a comparable price.

Additionally, paragraph (g) of proposed Regulation 5.18 would require each retail forex counterparty and each CPO, CTA and IB subject to part 5 to maintain records of all communications they receive concerning possible violations of the Act or Commission regulations involving their retail forex business. The required records would include the complainant's identity (if provided), the date of the transaction or contract at issue, and the name of the person who received the communication. The retail forex counterparty, CPO, CTA or IB would be required to provide copies of such records to the Commission.

The Commission believes that, given the volume of cases it has prosecuted in recent years involving retail forex fraud, requiring the maintenance of detailed records of customer complaints will provide such intermediaries with a comprehensive view of the types and numbers of problems that exist within their operations, and will provide the Commission with ready access to information regarding such problems.

Paragraph (h) of proposed Regulation 5.18 would require each person who applies for registration as an IB in order to solicit or accept off-exchange retail forex orders, and each person who succeeds to the business of an IB that solicits or accepts retail forex orders to enter into a guarantee agreement with an FCM or an RFED. As discussed above in relation to revisions to Commission Regulation 1.10, the Commission believes that the requirement that RFEDs and FCMs enter a guarantee agreement with the IBs that solicit business on their behalf serves the public's interest by discouraging FCMs and RFEDs from associating with IBs without regard to the sales practices they employ.

Paragraph (i) of proposed Regulation 5.18 would require retail forex counterparties to calculate on a quarterly basis the percentage of non-discretionary accounts that were profitable, and to maintain records of those calculations together with supporting data for five years in accordance with Regulation 1.31. As discussed above, Proposed Regulation 5.5 requires that RFEDs, FCMs and IBs provided retail forex customers with a risk disclosure statement that includes the percentage of accounts that were profitable for each of the four most recent quarters. Proposed Regulation 5.8 buttresses this requirement by directing retail forex counterparties to make such calculations on a quarterly basis and maintain records reflecting the calculation.

Finally, paragraph (j) would require each retail forex counterparty to designate at least one principal to serve as its chief compliance officer, who would be required to certify annually to the Commission and to NFA that the retail forex counterparty had in place policies and procedures reasonably designed to achieve compliance with the Act and the Commission's regulations. The Commission intends that retail forex counterparties adhere to the highest professional standards and that they take their compliance responsibilities seriously. With the requirement of a high level compliance officer and annual certification, Commission registrants will be expected to meet these standards and required to identify the person within the entity responsible for meeting them.

16. Proposed Regulation 5.19—Pending Legal Proceedings

Proposed Regulation 5.19 requires RFEDs, FCMs CPOs, CTAs and IBs to disclose pending legal matters and specifies the manner in which such matters are to be reported to the Commission, as well as the criteria for determining which proceedings are

[90] Similar prohibitions already apply to CPOs and CTAs (section 4o(b) of the Act) and to leverage transaction merchants (Regulation 31.19). See also NFA Compliance Rule 2–22 which speaks to all NFA members. The Commission believes that a broad statement of the prohibition is appropriate here to ensure that customers do not misapprehend the implications of registration as previously unregistered off-exchange retail forex market participants come into compliance with the registration requirements imposed on them by the CRA.

[91] *See,* Regulation 1.56 for the existing prohibition affecting FCMs and IBs engaged in futures and commodity option transactions.

[92] "Retail forex counterparty" is defined for purposes of Regulation 5.18 to include RFEDs, FCMs and affiliated persons of FCMs.

[93] "Related person" of a forex counterparty is defined for purposes of Regulation 5.18 as a general partner, officer, director, owner of more than a ten percent interest, associated person, employee, relative or spouse of the foregoing or relative of a spouse who shares the same home.

required to be disclosed. As discussed above, given the high incidence of fraud in connection with retail forex transactions, the Commission desires to monitor legal actions taken against registrants. Requiring reporting of such actions is one of the most direct ways of determining where problems exist and what registrants may have failed to deal fairly with customers.

17. Proposed Regulation 5.20—Special Calls for Information

Proposed Regulation 5.20 is patterned on existing Regulations 21.00 through 21.03. The purpose of proposed Regulation 5.20 is to ensure that the Commission has the authority to obtain information regarding retail forex accounts and transactions when such information is necessary to enable the Commission to carry out its responsibilities under the Act, and to set forth the responsibilities and duties of RFEDs, FCMs, and IBs when a special call is issued.

18. Proposed Regulation 5.21—Supervision of Retail Forex Accounts

Proposed Regulation 5.21 imposes the same supervision requirements set forth in existing Regulation 166.3 upon Commission registrants subject to Part 5. A separate provision for retail forex is included in order to avoid any question whether the same duties apply to persons with supervisory responsibilities in the context of retail forex trading activity.

19. Proposed Regulation 5.22—Registered Futures Association Membership

In addition to registering with the Commission, the CRA provides that RFEDs and persons who provide retail forex trading advice, operate retail forex pools or solicit retail forex customers or accounts must also become members of a registered futures association.[94] Accordingly, proposed Regulation 5.22 requires registered futures association membership for RFEDs, and for each person (1) required to register as an IB because the person accepts orders for retail forex transactions; (2) required to register as a CPO because the person operates, or solicits funds, securities or property for, a pooled investment vehicle that engages in retail forex transactions; or (3) required to register as a CTA because the person exercises discretionary trading authority, or obtains written authority over, an account in connection with retail forex transactions.

20. Proposed Regulation 5.23—Bulk Transfers and Bulk Liquidations

Proposed Regulation 5.23 is patterned generally upon existing Regulation 1.65, but has been modified to take into account certain rules of the National Futures Association, that have been approved by the Commission, that govern the transfer or liquidation of the accounts of retail forex customers.[95] Proposed Regulation 5.23 permits transfers that are requested by the retail forex customer or expressly consented to by the retail forex customer's prior, specific consent in writing, or those done in accordance with rules adopted by the DSRO of the RFED, FCM or IB, as the case may be, and approved by the Commission that establish notice and other requirements for such assignments and transfers. The proposed regulation also duplicates, for the most part, the requirements applicable to bulk transfer notices to the Commission under Regulation 1.65. However, the draft regulation requires notice not only of bulk transfers, but also bulk liquidations, and effectively defines the term "bulk" to mean the transfer or liquidation of 50 percent or more of the total retail forex customer accounts carried by the RFED, FCM or IB.[96]

21. Proposed Regulation 5.24—Applicability of Other Parts of the Commission's Regulations

Proposed Regulation 5.24 states that, insofar as consistent with the requirements of part 5, the requirements of other parts of the Commission's regulations that apply to a person shall apply to that person as though those provisions were expressly set forth in part 5. For example, Regulation 1.31 sets forth the Commission's generally applicable recordkeeping requirements and speaks in terms of "persons." Proposed Regulation 5.24 is intended to incorporate such provisions by reference to the extent that part 5 does not impose contradictory requirements.

22. Proposed Regulation 5.25—Applicability of Act

Proposed Section 5.25 incorporates various provisions of the Act which apply generally to registrants, specifying that the provisions of those sections are to be read to include the categories of forex registrants identified in proposed Section 5.1, and that the provisions of those sections are to be read to include off-exchange retail forex transactions and those that that engage in them. Specifically, the provisions of Sections 4b, 4c(b), 4f, 4g, 4k, 4m, 4n, 4o, 6(c)–(e), 6b, 6c, 8(a)–(e), 8a, and 12(f) apply to off-exchange retail forex transactions just as they do to exchange-traded transactions.

III. Related Matters

A. Regulatory Flexibility Act

FCMs and CPOs: The Regulatory Flexibility Act ("RFA")[97] requires that agencies, in proposing rules, consider the impact of those rules on small businesses.[98] The Commission has already established certain definitions of "small entities" to be used in evaluating the impact of its rules on such small entities in accordance with the RFA.[99] In that statement, the Commission concluded that neither FCMs nor registered CPOs should be considered to be small entities for purposes of the RFA. With respect to FCMs, the Commission's determination was based in part upon their obligation to meet the capital requirement established by the Commission and the purposes of protecting financial integrity.[100]

As for CPOs, the Commission determined that registered CPOs are not small entities based upon its existing regulatory standard for exempting certain small CPOs from the requirement to register under the Act.[101] (A CPO need not register with the Commission if the gross capital contributions for all pools under its management do not exceed $400,000 and there are not more than fifteen participants in any one of those pools.[102])

Thus, with respect to FCMs and registered CPOs, the Commission believes that the Proposal will not have a significant economic impact on a substantial number of small entities.

CTAs: The Commission has previously decided to evaluate, within the context of a particular rule proposal, whether all or some CTAs should be considered to be small entities, and if so, to then analyze the economic impact on them of any such rule.[103] CTAs

[94] *See,* 7 U.S.C. 2(c)(2)(B)(i)(II)(gg); 2(c)(2)(B)(iv); 2(c)(2)(C)(i)(II)(aa); and 2(c)(2)(C)(iii).

[95] *See,* proposed Regulation 5.23(a)(1).

[96] *See,* proposed Regulation 5.23(a)(2).

[97] 5 U.S.C. *et seq.*

[98] By its terms, the RFA does not apply to "individuals." *See* 48 FR 14933, n. 115 (April 6, 1983). Because associated persons must be individuals, (see Commission Regulation 1.3(aa) and proposed Regulations 5.1(c), (d)(2), (e)(2), (g)(2) and (i)(2)), the RFA does not apply to APs and no analysis of the economic impact of this rule proposal on such persons is required.

[99] 47 FR 18618 (April 30, 1982).

[100] *Id.* at 18619.

[101] *Id.* at 18619–20.

[102] 17 CFR 4.13(a)(2) (2009).

[103] 47 FR at 18620.

wishing to advise retail forex customers may include both currently registered CTAs and previously unregistered persons who now will be required to register. As to the first group, there should be no significant new economic impact. As to the second group, registration will require the submission of application forms, fingerprinting of principals, and payment of registration fees. To the extent that CTAs can be considered to be small entities, the Commission does not consider either the proposed registration fee or the proposed fingerprinting requirement for newly registered CTAs to have significant economic impact.[104]

IBs: In its 1982 policy statement, the Commission proposed that for purposes of the RFA and future rulemakings, the Commission would not consider introducing brokers to be "small entities" for essentially the same reasons that FCMs had previously been determined not to be small entities.[105] However, this determination was based, in part, on the fact that IBs, like FCMs, are required to maintain a specified level of adjusted net capital. Under the proposal, retail forex IBs would not be subject to a capital requirement; rather, they would have to operate pursuant to a guarantee agreement. Nevertheless, as discussed above with regard to CTAs, registration of previously unregistered entities will require the submission of application forms, fingerprinting of principals, and payment of registration fees. To the extent that IBs can be considered to be small entities, the Commission does not consider either the proposed registration fee or the proposed fingerprinting requirement for IBs subject to Part 5 to have significant economic impact.

RFEDs: RFEDs are a new category of registrant. Accordingly, the Commission has not addressed the question of whether such persons are, in fact, small entities for purposes of the RFA. The Commission does not believe that there are regulatory alternatives to those being proposed which would be consistent with the statutory mandate to provide protection to the public against irresponsible or fraudulent business practices. For purposes of the RFA and future rulemakings, the Commission is hereby proposing that RFEDs not be considered to be "small entities" for essentially the same reasons that FCMs have previously been determined not to be small entities.[106] As with FCMs, a requirement to maintain a specified level of adjusted net capital would be imposed upon RFEDs to ensure that they maintain sufficient capital resources to guarantee their financial accountability and to promote responsible and reliable business operations. Moreover, the Commission has sought to fashion its proposed regulatory program for RFEDs in a manner which is responsive to the function, purposes, and size of the entity being regulated consistent with the objective of the RFA. In particular, the minimum capital requirement required by the CRA effectuates the Congressional purpose that RFEDs maintain sufficient reserve of capital to remain economically viable. For the reasons stated above, the Commission hereby proposes not to define RFEDs as small entities for RFA purposes.

B. Paperwork Reduction Act

The Proposal contains information collection requirements. The Paperwork Reduction Act of 1995 ("PRA")[107] imposes certain requirements of federal agencies (including the Commission) in conducting or sponsoring any collection of information as defined by the PRA. The Commission has submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the PRA, an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement the Proposal.

1. Collection of Information

If adopted, the Proposal would require existing and new registrants in the FCM, RFED, CTA, CPO and IB categories to submit certain filings to the Commission which had not been previously required; these collections of information are found primarily in the new part 5 of the proposed regulations. To the extent industry participants are currently registered as CTAs, CPOs, IBs or FCMs, and intend to engage in retail forex transactions, the obligations imposed by the proposed rules would not be significantly altered, but the existing collections will be amended to reflect additional, new registrants within these categories, and the part 5 collection will include any additional information collections not captured in existing collections. The estimated numbers of respondents, annual responses by each, average hours per response and annual reporting burden reflected in section 2 immediately below represent estimates from the last update of the collection plus new respondents, responses and a new calculation of associated burdens. Since several of the proposals contained herein consist of proposed amendments to rules which have already been assigned OMB control numbers, the Commission assumes that the amended rules will be assigned the same OMB control number. Similarly, the Commission is proposing that the new registrants use amendments to existing forms in order to comply with registration and financial reporting requirements, those forms, as amended, will in all likelihood retain the same OMB control number which they have at present. Finally, as to RFEDs, a new category of registrant, new OMB control numbers will be assigned to new collections; to the extent existing regulations have been amended to include RFEDs, the collections associated with those regulations will be amended to reflect the new category of registrant. Each effected collection and the new part 5 collection are discussed separately below.

2. Existing Collections

a. Collection 3038–0024 (Part 1 of the Regulations)

Generally speaking, collections occurring by operation of part 1 regulations affect FCMs and IBs. Those entities that will be required to register as RFEDs are currently registered as FCMs, so existing Collection 3038–0024 has been amended, where appropriate, to reflect fewer FCM respondents. The collection has also been amended, where appropriate, to reflect additional IB registrants, who were not previously required to register to conduct off-exchange retail forex business and now will be.

Estimated number of respondents: 2,160.

Annual responses by each respondent: 38,894.

Estimated average hours per response: 1.9.

Annual reporting burden: 21,229.

b. Collection 3038–0023 (Part 3 of the Regulations)

Part 3 of the Commission's regulations concern registration requirements. Existing Collection 3038–0023 has been amended to reflect the obligations associated with the registration of new entrants, such as CTAs, CPOs, IBs, and APs, that had not previously been required to register in order to conduct off-exchange retail forex transactions. Since the registration requirements are in all respects the same as for current registrants, the collection has been amended only insofar as it concerns the increased estimated number of respondents and the corresponding estimated annual burden.

[104] 48 FR 35248 at 35276 (August 3, 1983).

[105] 47 FR at 18619.

[106] *Id.*

[107] 44 U.S.C. 3501, *et seq.*

Estimated number of respondents: 71,857.

Annual responses by each respondent: 73,694.

Estimated average hours per response: 0.09.

Annual reporting burden: 6,632.

c. Collection 3038–0005 (Part 4 of the Commission's Regulations)

Part 4 of the Commission's regulations concerns the operations of CTAs and CPOs, and the circumstances under which they may be exempted from registration. As discussed above, the estimated average time spent per response has not been altered. However, adjustments have been made to the collection to account for additional CPOs and CTAs: filing for exemptions from the Part 4 rules, developing and distributing required disclosure documents; complying with required reporting requirements.

Estimated number of respondents: 9,486.

Annual responses by each respondent: 37,930.

Estimated average hours per response: 17.

Annual reporting burden: 183,700.[108]

d. Collection 3038–0055 (Part 160 of the Regulations)

Part 160 requires financial institutions to provide notice to customers regarding privacy policies and practices. As discussed above, the estimated average time spent per response has not been amended; rather, the collection has been amended to reflect new registrants that will have to comply with the part 160 requirements.

Estimated number of respondents: 4,066.

Annual responses by each respondent: 96.

Estimated average hours per response: 0.24.

Annual reporting burden: 6,186.

3. New Collection 3038—NEW (Proposed Part 5 of the Regulations)

Part 5 of the proposed regulations requires various information collections by various registrants. The Commission is seeking a new and separate control number for collections occurring pursuant to part 5. Among the sections requiring information collections in the new part 5 is Regulation 5.5, which would require the development and distribution of risk disclosure documents by RFEDs, FCMs and IBs transacting off-exchange retail forex. Regulation 5.6 would require reporting by RFEDs that fail to meet minimum financial requirements or are otherwise required to provide early warning notices. Regulation 5.11 would require annual risk assessment reporting by RFEDs, and Regulation 5.12 would require financial reports of RFEDs applying for registration. Regulation 5.13 concerns reporting to customers by RFEDS and FCMs. Regulation 5.18 generally concerns trading and operational standards for retail forex counterparties and intermediaries. Among the sections within Regulation 5.18 requiring collections of information are 5.18(g), which requires all counterparties and intermediaries to forward to the Commission records of communications received concerning facts giving rise to possible violations of the Act or Regulations, and 5.18(j), which requires forex counterparties to provide the Commission with an annual compliance certification. Regulation 5.19 would require all forex counterparties and intermediaries to provide the Commission with notice of legal proceedings to which they are parties. Finally, Regulation 5.23 concerns the notices that must be given in the event of bulk transfers or liquidations.

OMB Control Number 3038—NEW.

Estimated number of respondents: 1,156.

Annual responses by each respondent: 4,493.

Estimated average hours per response: 1.8.

Annual reporting burden: 4,202.

Copies of the information collection submission to OMB are available from the CFT Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160. The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility and clarity of the information to be collected; and

Minimizing 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.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Desk Officer of the Commodity Futures Trading Commission. OMB is required to make a decision concerning the collection of information contained in the Proposal between 30 and 60 days after publication of his document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public comment to the Commission on the proposed rules.

C. Cost-Benefit Analysis

Section 15(a) of the Act[109] requires the Commission to consider the costs and benefits of its action before issuing new regulations under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern, enumerated below. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five enumerated areas and could, in its discretion, determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

As discussed in more detail above, the Proposal would create a comprehensive scheme to implement the requirements of the CRA. It would put in place requirements including registration, disclosure, recordkeeping, financial reporting, minimum capital and other operational standards. This would be achieved through both amendments to existing regulations and the creation of a new, free-standing part to the Commission's regulations. The Commission is considering the costs

[108] Due to a mathematical error in the previous Collection 3038–0005, the current estimated numbers reflect a large increase in the burden to respondents. The estimated increase in the annual responses to by each respondent is increased by 721 as a result of this rulemaking. The estimated annual increase in the hours of reporting burden is increased by 4,833 as a result of this rulemaking.

[109] 7 U.S.C. 19(a).

and benefits of the Proposal in light of the specific provisions of section 15(a) as follows:

1. Protection of market participants and the public. The Proposal should enhance considerably the protection of market participants and the public because it requires, for the first time, the registration of several categories of market participants and requires adherence to operational standards that had not previously applied. The benefits that inhere in the imposition of these requirements to a sector of the off-exchange market that has been largely unregulated to this point, and which is geared towards the retail public, are manifest.

2. Efficiency and competition. In its Conference Report, Congress indicated that the Commission should avoid creating two different regulatory regimes for similar business models with respect to FCMs or RFEDs engaging in off-exchange retail forex transactions.[110] Accordingly, the Commission has endeavored to ensure that these entities be treated in comparable fashion relative to one another. Moreover, the Commission has endeavored, wherever possible, to propose regulations in the proposed part 5 that are analogous to regulations imposed upon intermediaries engaged in on-exchange transactions. Accordingly, the Commission believes that it has provided an evenhanded regulatory scheme that will be familiar to industry participants.

3. Financial integrity of futures markets and price discovery. The Proposal's regulations concern retail, off-exchange markets. These markets serve primarily as a vehicle for members of the retail public to engage in speculative transactions. Accordingly, the Commission does not perceive a significant intersection between the operations of these markets and the financial integrity or price discovery functions of the markets generally.

4. Sound risk management practices. The Proposal includes requirements regarding capital, financial reporting, risk assessment recordkeeping, and risk assessment reporting that are comparable to those required of entities engaged in on-exchange trading. The Commission believes that the benefits of these risk management requirements—which strive to ensure the financial soundness of firms—have been borne out on the exchange-traded side and will be of significant benefit with regard to its oversight of retail forex counterparties.

5. Other public interest considerations. The retail, off-exchange forex market has been largely unregulated until now. The Commission believes that the Proposal is beneficial in that will provide needed protections for members of the public engaging in these transactions. The Proposal will also bring much needed oversight to the forex counterparties and intermediaries that interact with the public.

After considering these factors, the Commission has determined to issue the Proposal. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the Proposal with their comment letters.

List of Subjects

17 CFR Part 1

Definitions, Minimum financial and reporting requirements. Recordkeeping requirements, Prohibited transactions in commodity options, Miscellaneous.

17 CFR Part 3

Definitions, Customer protection, Licensing, Registration.

17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Exemption from registration, Reporting and recordkeeping requirements.

17 CFR Part 5

Bulk transfers, Commodity pool operators, Commodity trading advisors, Consumer protection, Customer's money, securities and property, Definitions, Foreign exchange, Minimum financial and reporting requirements, Prohibited transactions in retail foreign exchange, Recordkeeping requirements, Retail foreign exchange dealers, Risk assessment, Special calls, Trading practices.

17 CFR Part 10

Adjudicatory proceedings, Rules of practice.

17 CFR Part 140

Authority delgations (Government agencies, Conflict of interests, Organization and functions (Government agencies).

17 CFR Part 145

Confidential business information, Freedom of information.

17 CFR Part 147

Sunshine Act.

17 CFR Part 160

Consumer financial information, Definitions, Nonpublic personal information, Privacy.

17 CFR Part 166

Arbitration, Authorization to trade, Customer protection, Definitions, Dispute settlement; Litigation; Reparations.

For the reasons presented above, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6h, 6i, 6j, 6k, 6*l,* 6m, 6n, 6*o,* 6p, 7, 7a, 7b, 8, 9, 12, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24.

§ 1.1 [Removed and Reserved]

2. Section 1.1 is removed and reserved.

3. Section 1.3 is amended by revising paragraphs (nn) and (yy) to read as follows:

§ 1.3 Definitions.

* * * * *

(nn) *Guarantee agreement.* This term means an agreement of guaranty in the form set forth in part B or C of Form 1–FR, executed by a registered futures commission merchant or retail foreign exchange dealer, as appropriate, and by an introducing broker or applicant for registration as an introducing broker on behalf of an introducing broker or applicant for registration as an introducing broker in satisfaction of the alternative adjusted net capital requirement set forth in § 1.17(a)(1)(iii).

* * * * *

(yy) *Commodity Interest.* This term means:

(1) Any contract for the purchase or sale of a commodity for future delivery;

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act; and

(3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act.

4. Section 1.4 is revised to read as follows:

[110] As noted in the Conference Report that accompanied the CRA, "To the extent their risk profiles are similar, the managers intend for FCMs and RFEDs to be regulated substantially equivalently in terms of their off-exchange retail foreign currency business." H.R. Rep. No. 110–627, at 980 (2008) (Conf. Rep.). The Conference Report is available via the Internet on the CFTC's Web site.

§ 1.4 Use of electronic signatures.

For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a document to be signed by a customer of a futures commission merchant or introducing broker, a retail forex customer of a retail foreign exchange dealer or futures commission merchant, a pool participant or a client of a commodity trading advisor, an electronic signature executed by the customer, participant or client will be sufficient, if the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator or commodity trading advisor elects generally to accept electronic signatures; *Provided, however,* That the electronic signature must comply with applicable Federal laws and other Commission rules; And, *Provided further,* That the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity pool operator or commodity trading advisor must adopt and utilize reasonable safeguards regarding the use of electronic signatures, including at a minimum safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed.

5. Section 1.10 is amended by revising paragraph (j) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(j) *Requirements for guarantee agreement.* (1) A guarantee agreement filed pursuant to this section must be signed in a manner sufficient to be a binding guarantee under local law by an appropriate person on behalf of the futures commission merchant or retail foreign exchange dealer and the introducing broker, and each signature must be accompanied by evidence that the signatory is authorized to enter the agreement on behalf of the futures commission merchant, retail foreign exchange dealer, or introducing broker and is such an appropriate person. For purposes of this paragraph (j), an appropriate person shall be the proprietor, if the firm is a sole proprietorship; a general partner, if the firm is a partnership; and either the chief executive officer or the chief financial officer, if the firm is a corporation; and, if the firm is a limited liability company or limited liability partnership, either the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority for the limited liability company or limited liability partnership.

(2) No futures commission merchant or retail foreign exchange dealer may enter into a guarantee agreement if:

(i) It knows or should have known that its adjusted net capital is less than the amount set forth in § 1.12(b) of this part or § 5.6(b) of this chapter, as applicable; or

(ii) There is filed against the futures commission merchant or retail foreign exchange dealer an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 of this chapter.

(3) A retail foreign exchange dealer may enter into a guarantee agreement only with an introducing broker as defined in § 5.1(f)(1). A retail foreign exchange dealer may not enter into a guarantee agreement with an introducing broker as defined in § 1.3(mm) of this part.

(4) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.10(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

(5)(i) If the registration of the introducing broker is suspended, revoked, or withdrawn in accordance with the provisions of this chapter, the guarantee agreement shall expire as of the date of such suspension, revocation or withdrawal.

(ii) If the registration of the futures commission merchant or retail foreign exchange dealer is suspended or revoked, the guarantee agreement shall expire 30 days after such suspension or revocation, or at such earlier time as may be approved by the Commission, the introducing broker, and the introducing broker's designated self-regulatory organization.

(6) A guarantee agreement may be terminated at any time during the term thereof:

(i) By mutual written consent of the parties, signed by an appropriate person on behalf of each party, with prompt written notice thereof, signed by an appropriate person on behalf of each party, to the Commission and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker;

(ii) For good cause shown, by either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker; or

(iii) By either party giving written notice of its intention to terminate the agreement, signed by an appropriate person, at least 30 days prior to the proposed termination date, to the other party to the agreement, to the Commission, and to the designated self-regulatory organizations of the futures commission merchant or retail foreign exchange dealer and the introducing broker.

(7) The termination of a guarantee agreement by a futures commission merchant, retail foreign exchange dealer or an introducing broker, or the expiration of such an agreement, shall not relieve any party from any liability or obligation arising from acts or omissions which occurred during the term of the agreement.

(8) An introducing broker may not simultaneously be a party to more than one guarantee agreement: *Provided, however,* That the provisions of this paragraph (j)(8) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant or retail foreign exchange dealer if the introducing broker, futures commission merchant or retail foreign exchange dealer which is a party to the existing agreement has provided notice of termination of the existing agreement in accordance with the provisions of paragraph (j)(6) of this section, and the new guarantee agreement does not become effective until the day following the date of termination of the existing agreement: *And, provided further,* That the provisions of this paragraph (j)(8) shall not be deemed to preclude an introducing broker from entering into a guarantee agreement with another futures commission merchant or retail foreign exchange dealer if the futures commission merchant or retail foreign exchange dealer which is a party to the existing agreement ceases to remain registered and the existing agreement would therefore expire in accordance with the provisions of paragraph (j)(6)(ii) of this section.

(9)(i)(A) An introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(6) of this

section, or that is due to expire in accordance with the provisions of paragraph (j)(5)(ii) of this section, must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization either a new guarantee agreement effective as of the day following the date of termination of the existing agreement, or, in the case of a guarantee agreement that is due to expire in accordance with the provisions of paragraph (j)(4)(ii) of this section, a new guarantee agreement effective on or before such expiration, or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed: *Provided, however,* that an introducing broker as defined in § 5.1(f)(1) of this chapter that is party to a guarantee agreement that has been terminated or that has expired must cease doing business as an introducing broker on or before the effective date of such termination or expiration unless, on or before 10 days prior to the effective date of such termination or expiration or such other period of time as the Commission or the designated self-regulatory organization may allow for good cause shown, the introducing broker files with its designated self-regulatory organization a new guarantee agreement effective on or before the termination or expiration date of the terminating or expiring guarantee agreement.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(ii)(A) Notwithstanding the provisions of paragraph (j)(9)(i) of this section or of § 1.17(a), an introducing broker that is a party to a guarantee agreement that has been terminated in accordance with the provisions of paragraph (j)(6)(ii) of this section shall not be deemed to be in violation of the minimum adjusted net capital requirement of § 1.17(a)(1)(iii) or (a)(2) for 30 days following such termination. Such an introducing broker must cease doing business as an introducing broker on or after the effective date of such termination, and may not resume doing business as an introducing broker unless and until it files a new agreement or either:

(*1*) A Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than 45 days prior to the date on which the report is filed; or

(*2*) A Form 1–FR–IB as of a date not more than 17 business days prior to the date on which the report is filed and a Form 1–FR–IB certified by an independent public accountant in accordance with § 1.16 as of a date not more than one year prior to the date on which the report is filed: *Provided, however,* that an introducing broker as defined in § 5.1(f)(1) of this chapter that is party to a guarantee agreement that has been terminated must cease doing business as an introducing broker from and after the effective date of such termination, and may not resume doing business as an introducing broker as defined in § 5.1(f)(1) of this chapter unless and until it files a new guarantee agreement.

(B) Each person filing a Form 1–FR–IB in accordance with this section must include with the financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

* * * * *

6. Section 1.35 is amended by revising paragraphs (a), (a-1) and (b) to read as follows:

§ 1.35 Records of cash commodity, futures, and option transactions.

(a) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of contract markets.* Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, retail forex transactions, commodity options, and cash commodities (including currencies). Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall retain the required records, data, and memoranda in accordance with the requirements of § 1.31, and produce them for inspection and furnish true and correct information and reports as to the contents or the meaning thereof, when and as requested by an authorized representative of the Commission or the United States Department of Justice. Included among such records shall be all orders (filled, unfilled, or canceled), trading cards, signature cards, street books, journals, ledgers, canceled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda, which have been prepared in the course of its business of dealing in commodity futures, retail forex transactions, commodity options, and cash commodities. Among such records each member of a contract market must retain and produce for inspection are all documents on which trade information is originally recorded, whether or not such documents must be prepared pursuant to the rules or regulations of either the Commission or the contract market. For purposes of this section, such documents are referred to as "original source documents."

(a–1) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of contract markets: Recording of customers' and option customers' orders.* (1) Each futures commission merchant, each retail foreign exchange dealer and each introducing broker receiving a customer's, retail forex customer's or option customer's order, as applicable, shall immediately upon receipt thereof prepare a written record of the order including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, and shall record thereon, by timestamp or other timing device, the date and time, to the nearest minute, the order is received, and in addition, for option customers' orders, the time, to the nearest minute, the order is transmitted for execution.

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, the order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of the order in nonerasable ink, including the account identification, except as provided in paragraph (a–1)(5) of this section or appendix C to this part, and order number and shall record thereon,

by timestamp or other timing device, the date and time, to the nearest minute, the order is received.

(ii) Except as provided in paragraph (a–1)(3) of this section:

(A) Each contract market member who on the floor of such contract market receives an order from another member present on the floor which is not in the form of a written record shall, immediately upon receipt of such order, prepare a written record of the order or obtain from the member who placed the order a written record of the order, in non-erasable ink including the account identification and order number and shall record thereon, by time-stamp or other timing device, the date and time, to the nearest minute, the order is received; or

(B) When a contract market member present on the floor places an order, which is not in the form of a written record, for his own account or an account over which he has control, with another member of such contract market for execution:

(1) The member placing such order immediately upon placement of the order shall record the order and time of placement to the nearest minute on a sequentially-numbered trading card maintained in accordance with the requirements of paragraph (d) of this section;

(2) The member receiving and executing such order immediately upon execution of the order shall record the time of execution to the nearest minute on a trading card or other record maintained pursuant to the requirements of paragraph (d) of this section; and

(3) The member receiving and executing the order shall return such trading card or other record to the member placing the order. The member placing the order then must submit together both of the trading cards or other records documenting such trade to contract market personnel or the clearing member, in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(iii) Each contract market may adopt rules, which must be submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41, that provide alternative requirements to those contained in paragraph (a–1)(2)(ii) of this section. Such rules shall, at a minimum, require that the contemporaneous written records:

(A) Contain the terms of the order;

(B) Include reliable timing data for the initiation and execution of the order which would permit complete and effective reconstruction of the order placement and execution; and

(C) Be submitted to contract market personnel or clearing members in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(3)(i) The requirements of paragraph (a–1)(2)(ii) of this section will not apply if a contract market maintains in effect rules which have been submitted to the Commission pursuant to section 5a(a)(12)(A) of the Act and Commission Regulation 1.41, which provide for an exemption where:

(A) A contract market member places with another member of such contract market an order that is part of a spread transaction;

(B) The member placing the order personally executes one or more legs of the spread; and

(C) The member receiving and executing such order immediately upon execution of the order records the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (d) of this section.

(ii) Each contract market shall, as part of its trade practice surveillance program, conduct surveillance for compliance with the recordkeeping and other requirements under paragraphs (a–1) (2) and (3) of this section, and for trading abuses related to the execution of orders for members present on the floor of the contract market.

(4) Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of the contract market received in accordance with paragraphs (a–1)(2)(i) or (a–1)(2)(ii)(A) of this section, shall record on a written record of the order, including the account identification, except as provided in paragraph (a–1)(5) of this section, and order number, by timestamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on the order tickets must be written in nonerasable ink.

(5) *Post-execution allocation of bunched orders.* Specific customer account identifiers for accounts included in bunched orders need not be recorded at time of order placement or upon report of execution if the requirements of paragraphs (a–1)(5)(i)–(iv) of this section are met.

(i) *Eligible account managers.* The person placing and directing the allocation of an order eligible for post-execution allocation must have been granted written investment discretion with regard to participating customer accounts. The following persons shall qualify as eligible account managers:

(A) A commodity trading advisor registered with the Commission pursuant to the Act or excluded or exempt from registration under the Act or the Commission's rules, except for entities exempt under § 4.14(a)(3) or § 4.14(a)(6) of this chapter;

(B) An investment adviser registered with the Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940 or with a state pursuant to applicable state law or excluded or exempt from registration under such Act or applicable state law or rule;

(C) A bank, insurance company, trust company, or savings and loan association subject to federal or state regulation; or

(D) A foreign adviser that exercises discretionary trading authority solely over the accounts of non-U.S. persons, as defined in § 4.7(a)(1)(iv) of this chapter.

(ii) *Information.* Eligible account managers shall make the following information available to customers upon request:

(A) The general nature of the allocation methodology the account manager will use;

(B) Whether accounts in which the account manager may have any interest may be included with customer accounts in bunched orders eligible for post-execution allocation; and

(C) Summary or composite data sufficient for that customer to compare its results with those of other comparable customers and, if applicable, any account in which the account manager has an interest.

(iii) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

(iv) *Records.* (A) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, the information specified in paragraph (a–1)(5)(ii) of this section.

(B) Eligible account managers shall keep and must make available upon request of any representative of the Commission, the United States Department of Justice, or other appropriate regulatory agency, records sufficient to demonstrate that all allocations meet the standards of paragraph (a–1)(5)(iii) of this section and to permit the reconstruction of the handling of the order from the time of placement by the account manager to the allocation to individual accounts.

(C) Futures commission merchants that execute orders or that carry accounts eligible for post-execution allocation, and members of contract markets that execute such orders, must maintain records that, as applicable, identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated.

(D) In addition to any other remedies that may be available under the Act or otherwise, if the Commission has reason to believe that an account manager has failed to provide information requested pursuant to paragraph (a–1)(5)(iv)(A) or (a–1)(5)(iv)(B) of this section, the Commission may inform in writing any designated contract market or derivatives transaction execution facility and that designated contract market or derivatives transaction execution facility shall prohibit the account manager from submitting orders for execution except for liquidation of open positions and no futures commission merchants shall accept orders for execution on any designated contract market or derivatives transaction execution facility from the account manager except for liquidation of open positions.

(E) Any account manager that believes he or she is or may be adversely affected or aggrieved by action taken by the Commission under paragraph (a–1)(5)(iv)(D) of this section shall have the opportunity for a prompt hearing in accordance with the provisions of § 21.03(g) of this chapter.

* * * * *

(b) *Futures commission merchants, retail foreign exchange dealers, introducing brokers, and clearing members of contract markets.* Each futures commission merchant, each retail foreign exchange dealer, and each clearing member of a contract market and, for purposes of paragraph (b)(3) of this section, each introducing broker, shall, as a minimum requirement, prepare regularly and promptly, and keep systematically and in permanent form, the following:

(1) A financial ledger record which will show separately for each customer or retail forex customer or option customer all charges against and credits to such customer's or retail forex customer's or option customer's account, including but not limited to customer or retail forex customer funds deposited, withdrawn, or transferred, and charges or credits resulting from losses or gains on closed transactions;

(2) A record of transactions which will show separately for each account (including proprietary accounts):

(i) All commodity futures transactions executed for such account, including the date, price, quantity, market, commodity and future;

(ii) All retail forex transactions executed for such account, including the date, price, quantity, and currency; and

(iii) All commodity option transactions executed for such account, including the date, whether the transaction involved a put or call, expiration date, quantity, underlying contract for future delivery or underlying physical, strike price, and details of the purchase price of the option, including premium, mark-up, commission and fees; and

(3) A record or journal which will separately show for each business day complete details of:

(i) All commodity futures transactions executed on that day, including the date, price, quantity, market, commodity, future and the person for whom such transaction was made;

(ii) All retail forex transactions executed on that day for such account, including the date, price, quantity, currency and the person for whom such transaction was made; and

(iii) All commodity option transactions executed on that day, including the date, whether the transaction involved a put or call, the expiration date, quantity, underlying contract for future delivery, or underlying physical, strike price, details of the purchase price of the option, including premium, mark-up, commission and fees and the person for whom the transaction was made; and

(iv) In the case of an introducing broker, the record or journal required by this paragraph (b)(3) shall also include the futures commission merchant or retail foreign exchange dealer carrying the account for which each commodity futures, retail forex and commodity option transaction was executed on that day. Provided, however, that where reproductions on microfilm, microfiche or optical disk are substituted for hard copy in accordance with the provisions of § 1.31(b) of this part, the requirements of paragraphs (b)(1) and (b)(2) of this section will be considered met if the person required to keep such records is ready at all times to provide, and immediately provides in the same city as that in which such person's commodity' retail forex or commodity option books and records are maintained, at the expense of such person, reproduced copies which show the records as specified in paragraphs (b)(1) and (b)(2) of this section, on request of any representatives of the Commission or the U.S. Department of Justice.

* * * * *

7. Section 1.36 is amended by revising paragraph (a) to read as follows:

§ 1.36 Record of securities and property received from customers and option customers.

(a) Each futures commission merchant and each retail foreign exchange dealer shall maintain, as provided in § 1.31, a record of all securities and property received from customers, retail forex customers or option customers in lieu of money to margin, purchase, guarantee, or secure the commodity, retail forex or commodity option transactions of such customers, retail forex customers or option customers. Such record shall show separately for each customer, retail forex customer or option customer: a description of the securities or property received; the name and address of such customer, retail forex customer or option customer; the dates when the securities or property were received; the identity of the depositories or other places where such securities or property are segregated or held; the dates of deposits and withdrawals from such depositories; and the dates of return of such securities or property to such customer, retail forex customer or option customer, or other disposition thereof, together with the facts and circumstances of such other disposition. In the event any futures commission

merchant deposits with the clearing organization of a contract market, directly or with a bank or trust company acting as custodian for such clearing organization, securities and/or property which belong to a particular customer or option customer, such futures commission merchant shall obtain written acknowledgment from such clearing organization that it was informed that such securities or property belong to customers or option customers of the futures commission merchant making the deposit. Such acknowledgment shall be retained as provided in § 1.31.

* * * * *

8. Section 1.37 is amended by revising paragraph (a)(1) to read as follows:

§ 1.37 Customer's or option customer's name, address, and occupation recorded; record of guarantor or controller of account.

(a)(1) Each futures commission merchant, retail foreign exchange dealer, introducing broker, and member of a contract market shall keep a record in permanent form which shall show for each commodity futures, retail forex or option account carried or introduced by it the true name and address of the person for whom such account is carried or introduced and the principal occupation or business of such person as well as the name of any other person guaranteeing such account or exercising any trading control with respect to such account. For each such commodity option account, the records kept by such futures commission merchant, introducing broker, and member of a contract market must also show the name of the person who has solicited and is responsible for each option customer's account or assign account numbers in such a manner to identify that person.

* * * * *

9. Section 1.40 is revised to read as follows:

§ 1.40 Crop, market information letters, reports; copies required.

Each futures commission merchant, each retail foreign exchange dealer, each introducing broker and each member of a contract market shall, upon request, furnish or cause to be furnished to the Commission a true copy of any letter, circular, telegram, or report published or given general circulation by such futures commission merchant, retail foreign exchange dealer, introducing broker or member which concerns crop or market information or conditions that affect or tend to affect the price of any commodity or exchange rate, and the true source of or authority for the information contained therein.

10. Section 1.46 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.46 Application and closing out of offsetting long and short positions.

(a) *Application of purchases and sales.* (1) Except with respect to purchases or sales which are for omnibus accounts, or where the customer or account controller has instructed otherwise, any futures commission merchant who, on or subject to the rules of a designated contract market or registered derivatives transaction execution facility:

(i) Purchases any commodity for future delivery for the account of any customer when the account of such customer at the time of such purchase has a short position in the same future of the same commodity on the same market;

(ii) Sells any commodity for future delivery for the account of any customer when the account of such customer at the time of such sale has a long position in the same future of the same commodity on the same market;

(iii) Purchases a put or call option for the account of any option customer when the account of such option customer at the time of such purchase has a short put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that purchased; or

(iv) Sells a put or call option for the account of any option customer when the account of such option customer at the time of such sale has a long put or call option position with the same underlying futures contract or same underlying physical, strike price, expiration date and contract market as that sold—shall on the same day apply such purchase or sale against such previously held short or long futures or option position, as the case may be, and shall, for futures transactions, promptly furnish such customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant by an introducing broker and the names of the futures commission merchant and introducing broker.

(2) Any futures commission merchant or retail foreign exchange dealer who:

(i) Engages in a retail forex transaction involving the purchase of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such purchase has an open retail forex transaction for the sale of the same currency;

(ii) Engages in a retail forex transaction involving the sale of any currency for the account of any retail forex customer when the account of such retail forex customer at the time of such sale has an open retail forex transaction for the purchase of the same currency;

(iii) Purchases a put or call option involving foreign currency for the account of any option customer when the account of such option customer at the time of such purchase has a short put or call option position with the same underlying currency, strike price, and expiration date as that purchased; or

(iv) Sells a put or call option involving foreign currency for the account of any option customer when the account of such option customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold—shall immediately apply such purchase or sale against such previously held opposite transaction, and shall promptly furnish such retail forex customer a statement showing the financial result of the transactions involved and, if applicable, that the account was introduced to the futures commission merchant or retail foreign exchange dealer by an introducing broker and the names of the futures commission merchant or retail foreign exchange dealer, and the introducing broker.

(b) *Close-out against oldest open position.* In all instances wherein the short or long futures, retail forex transaction or option position in such customer's, retail forex customer's or option customer's account immediately prior to such offsetting purchase or sale is greater than the quantity purchased or sold, the futures commission merchant or retail foreign exchange dealer shall apply such offsetting purchase or sale to the oldest portion of the previously held short or long position: Provided, That upon specific instructions from the customer or option customer the offsetting transaction shall be applied as specified by the customer or option customer without regard to the date of acquisition of the previously held position; and Provided, further, that a futures commission merchant or retail foreign exchange dealer, if permitted by the rules of a registered futures association, may offset, at the customer's request, retail forex transactions of the same size, even if the customer holds other transactions of a different size, but in each case must offset the transaction against the oldest

transaction of the same size. Such instructions may also be accepted from any person who, by power of attorney or otherwise, actually directs trading in the customer's, retail forex customer's or option customer's account unless the person directing the trading is the futures commission merchant or retail foreign exchange dealer (including any partner thereof), or is an officer, employee, or agent of the futures commission merchant or retail foreign exchange dealer. With respect to every such offsetting transaction that, in accordance with such specific instructions, is not applied to the oldest portion of the previously held position, the futures commission merchant or retail foreign exchange dealer shall clearly show on the statement issued to the customer, retail forex customer or option customer in connection with the transaction, that because of the specific instructions given by or on behalf of the customer, retail forex customer or option customer the transaction was not applied in the usual manner, i.e., against the oldest portion of the previously held position. However, no such showing need be made if the futures commission merchant or retail foreign exchange dealer has received such specific instructions in writing from the customer, retail forex customer or option customer for whom such account is carried.

* * * * *

11. Section 1.52 is amended by:

a. Revising paragraphs (a) and (c);

b. Revising paragraphs (g)(3) and (g)(4); and

c. Revising paragraphs (h), (j), and (k) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants or registered retail foreign exchange dealers. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17, for futures commission merchants and introducing brokers, and § 5.7 for retail foreign exchange dealers. The definition of adjusted net capital must be the same as that prescribed in § 1.17(c) for futures commission merchants and introducing brokers, and § 5.7(b)(2) for futures commission merchants offering or engaging in retail forex transactions and for retail foreign exchange dealers: Provided, however, A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h)) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE, in lieu of Form 1–FR: And, provided further, A designated self-regulatory organization may permit its member introducing brokers to file a Form 1–FR–IB in lieu of a Form 1–FR–FCM.

* * * * *

(c) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered futures commission merchant, any registered retail foreign exchange dealer, or any registered introducing broker which is a member of more than one such self-regulatory organization, the responsibility of:

(1) Monitoring and auditing for compliance with the minimum financial and related reporting requirements adopted by such self-regulatory organizations in accordance with paragraph (a) of this section; and

(2) Receiving the financial reports necessitated by such minimum financial and related reporting requirements.

* * * * *

(g) * * *

(3) Reduces multiple monitoring and auditing for compliance with the minimum financial rules of the self-regulatory organizations submitting the plan for any futures commission merchant, retail foreign exchange dealer, or introducing broker which is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant, retail foreign exchange dealer, or introducing broker which is a member of more than one self-regulatory organization; * * *

(h) After the Commission has approved a plan or part of one under § 1.52(g), a self-regulatory organization relieved of responsibility must notify each of its members which is subject to such a plan:

(1) Of the limited nature of its responsibility for such a member's compliance with its minimum financial and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization which has been delegated responsibility for such a member.

* * * * *

(j) Whenever a registered futures commission merchant, a registered retail foreign exchange dealer, or a registered introducing broker holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give telegraphic notice of that event to the principal office of the Commission in Washington, DC, and send a copy of that notification to such futures commission merchant, retail foreign exchange dealer, or such introducing broker.

(k) Nothing in this section shall preclude the Commission from examining any futures commission merchant, retail foreign exchange dealer, or introducing broker for compliance with the minimum financial and related reporting requirements to which such futures commission merchant, retail foreign exchange dealer, or introducing broker is subject.

* * * * *

PART 3—REGISTRATION

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

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21 and 23.

13. Section 3.1 is amended by revising paragraph (c) to read as follows:

§ 3.1 Definitions.

* * * * *

(c) *Sponsor.* Sponsor means the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant which makes the certification required by § 3.12 of this part for the registration of an associated person of such sponsor.

* * * * *

14. Section 3.4 is amended by revising paragraph (a) to read as follows:

§ 3.4 Registration in one capacity not included in registration in any other capacity.

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, retail foreign exchange dealer, floor broker, floor trader, associated person, commodity trading advisor, commodity pool operator, introducing broker, and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided, however,* That a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

* * * * *

15. Section 3.10 is amended by:

a. Revising the heading;

b. Revising paragraph (a)(1);

c. Revising paragraph (b); and

d. Revising paragraph (d) to read as follows:

§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Application for registration.* (1)(i) Except as provided in paragraph (a)(3) of this section, application for registration as a futures commission merchant, retail foreign exchange dealers, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant must be on Form 7–R, completed and filed with the National Futures Association in accordance with the instructions thereto.

(ii) Applicants for registration as a futures commission merchant, retail foreign exchange dealer or introducing broker must accompany their Form 7–R with a Form 1–FR–FCM or Form 1–FR–IB, respectively, in accordance with the provisions of § 1.10 of this chapter: *Provided, however,* That an applicant for registration as a futures commission merchant or introducing broker which is registered with the Securities and Exchange Commission as a securities broker or dealer may accompany its Form 7–R with a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part II A, in accordance with the provisions of § 1.10(h) of this chapter.

* * * * *

(b) *Duration of registration.* (1) A person registered as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with paragraph (a) of this section will continue to be so registered until the effective date of any revocation or withdrawal of such registration. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration.

(2) A person registered as an introducing broker who was a party to a guarantee agreement with a futures commission merchant or retail foreign exchange dealer in accordance with § 1.10(j) of this chapter will have its registration cease thirty days after the termination of such guarantee agreement unless the procedures set forth in § 1.10(j)(8) of this chapter are followed.

* * * * *

(d) On a date to be established by the National Futures Association, and in accordance with procedures established by the National Futures Association, each registrant as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant shall, on an annual basis, review and update registration information maintained with the National Futures Association. The failure to complete the review and update within thirty days following the date established by the National Futures Association shall be deemed to be a request for withdrawal from registration, which shall be processed in accordance with the provisions of § 3.33(f).

* * * * *

16. Section 3.12 is amended by

a. Revising the heading;

b. Revising paragraph (a);

c. Revising paragraph (f)(1)(iii)(E);

d. Revising paragraph (f)(4);

e. Revising paragraph (h)(1)(i) and paragraph (h)(1)(iii); and

f. Removing paragraph (j)

The revisions read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

(a) *Registration required.* It shall be unlawful for any person to be associated with a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant as an associated person unless that person shall have registered under the Act as an associated person of that sponsoring futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant in accordance with the procedures in paragraphs (c), (d), (f), or (i), of this section or is exempt from such registration pursuant to paragraph (h) of this section.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(E) Associated person's supervision of any person or persons engaged in any of the foregoing solicitations or acceptances, with respect to any customers common to it and any other futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant with which the associated person is associated.

* * * * *

(4) If a person is associated with a futures commission merchant, with a retail foreign exchange dealer, or with an introducing broker and he directs customers seeking a managed account to use the services of a commodity trading advisor(s) approved by the futures commission merchant, retail foreign exchange dealer or introducing broker and all such customers' accounts solicited or accepted by the associated person are carried by the futures commission merchant, retail foreign exchange dealer or introduced by the introducing broker with which the associated person is associated, such a person shall be deemed to be associated solely with the futures commission merchant, retail foreign exchange dealer or introducing broker and may not also register as an associated person of the commodity trading advisor(s).

* * * * *

(h) * * *

(1) * * *

(i) Registered under the Act as a futures commission merchant, retail foreign exchange dealer, floor broker, or as an introducing broker;

* * * * *

(iii) The chief operating officer, general partner or other person in the supervisory chain-of-command, *provided* the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant engages in commodity interest related activity for customers as no more

than ten percent of its total revenue on an annual basis, the firm is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, the person for whom exemption is sought and the person designated in accordance with paragraphs (h)(1)(iii)(C) or (h)(1)(iii)(D) of this section are listed as principals of the firm, the fitness examination conducted by the National Futures Association with respect to these persons discloses no derogatory information that would disqualify any of such persons as a principal or as an associated person, and the firm files with the National Futures Association corporate or partnership resolutions stating that:

(A) Such supervisory person is not authorized to:

(*1*) Solicit or accept customers', retail forex customers', or leverage customers' orders,

(*2*) Solicit a client's or prospective client's discretionary account,

(*3*) Solicit funds, securities or property for a participation in a commodity pool, or

(*4*) Exercise any line supervisory authority over those persons so engaged;

(B) Such supervisory person has no authority with respect to hiring, firing or other personnel matters involving persons engaged in activities subject to regulation under the Act;

(C) Another person (or persons) designated therein, who is registered as an associated person(s) or who has applied for registration as an associated person(s) and is not subject to a pending proceeding brought by the Commission or a self-regulatory organization alleging fraud or failure to supervise, and has not been found in such a proceeding to have committed fraud or failed to supervise, as required by the Act, the rules promulgated thereunder or the rules of a self-regulatory organization, holds and exercises full and final supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm; and

(D) If the person (or persons) so designated in accordance with paragraph (h)(1)(iii)(C) of this section ceases to have the authority referred to therein, the firm will notify the National Futures Association within twenty days of such occurrence by means of a subsequent resolution which resolution must also include the name of another associated person (or persons) who has been vested with full supervisory authority, including authority to hire and fire personnel, over the customer commodity interest related activities of the firm in the event that all of those previously designated in accordance with paragraph (h)(1)(iii)(C) of this section have been relieved of such authority. Subsequent changes in supervisory authority shall be reported in the same manner; or

* * * * *

17. Section 3.21 is amended by:

a. Revising paragraph (b)(3); and

b. Revising paragraph (c)(1) through (3) and (c)(4)(i) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(b) * * *

(3) *With respect to the fingerprints of a principal.* An officer, if the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal will be affiliated is a corporation, a general partner, if a partnership, or the sole proprietor, if a sole proprietorship.

(c) *Outside directors.* Any futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant that has a principal who is a director but is not also an officer or employee of the firm may, in lieu of submitting a fingerprint card in accordance with the provisions of §§ 3.10(a)(2) and 3.31(a)(2), file a "Notice Pursuant to Rule 3.21(c)" with the National Futures Association. Such notice shall state, if true, that such outside director:

(1) Is not engaged in:

(i) The solicitation or acceptance of customers' orders or retail forex customers' orders,

(ii) The solicitation of funds, securities or property for a participation in a commodity pool,

(iii) The solicitation of a client's or prospective client's discretionary account,

(iv) The solicitation or acceptance of leverage customers' orders for leverage transactions;

(2) Does not regularly have access to the keeping, handling or processing of:

(i) Commodity interest transactions;

(ii) Customer funds, retail forex customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital; or

(3) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (c)(1) and (c)(2) of this section; and

(4) * * *:

(i) The name of the futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or applicant for registration in any of these capacities of which the person is an outside director;

* * * * *

18. Section 3.30 is amended by revising paragraph (a) to read as follows:

§ 3.30 Current address for purpose of delivery of communications from the Commission or the National Futures Association.

(a) The address of each registrant, applicant for registration and principal, as submitted on the application for registration (Form 7–R or Form 8–R) or as submitted on the biographical supplement (Form 8–R) shall be deemed to be the address for delivery to the registrant, applicant or principal for any communications from the Commission or the National Futures Association, including any summons, complaint, reparation claim, order, subpoena, special call, request for information, notice, and other written documents or correspondence, unless the registrant, applicant or principal specifies another address for this purpose: *Provided,* That the Commission or the National Futures Association may address any correspondence relating to a biographical supplement submitted for or on behalf of a principal to the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the principal is affiliated and may address any correspondence relating to the registration of an associated person to the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant with which the associated person or the applicant for registration is or will be associated as an associated person.

* * * * *

19. Section 3.31 is amended by revising paragraphs (a)(1), (b), (c), and (d) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a)(1) Each applicant or registrant as a futures commission merchant, retail foreign exchange dealer, commodity

trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant shall, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Form 8–R which no longer renders accurate and current the information contained therein. Each such correction shall be made on Form 3–R and shall be prepared and filed in accordance with the instructions thereto. *Provided, however,* that where a registrant is reporting a change in the form of organization from or to a sole proprietorship, the registrant must file a Form 7–W regarding the pre-existing organization and a Form 7–R regarding the newly formed organization.

* * * * *

(b) Each applicant or registrant as a floor broker, floor trader or associated person, and each principal of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which renders no longer accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

(c)(1) After the filing of a Form 8–R or a Form 3–R by or on behalf of any person for the purpose of permitting that person to be an associated person of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or a leverage transaction merchant, that futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the occurrence of either of the following, file a notice thereof with the National Futures Association indicating:

(i) The failure of that person to become associated with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor; or

(ii) The termination of the association of the associated person with the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant, and the reasons therefor.

(2) Each person registered as, or applying for registration as, a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker or leverage transaction merchant must, within thirty days after the termination of the affiliation of a principal with the registrant or applicant, file a notice thereof with the National Futures Association.

(3) Any notice required by paragraph (c) of this section must be filed on Form 8–T or on a Uniform Termination Notice for Securities Industry Registration.

(d) Each contract market or derivatives transaction execution facility that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, must notify the National Futures Association within sixty days after such person has ceased having trading privileges on such contract market or derivatives transaction execution facility.

(Approved by the Office of Management and Budget under control number 3038–0023)

20. Section 3.33 is amended by revising paragraphs (a) introductory text, (b) introductory text, (b)(6), and (e) to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must be made on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8–W, completed and filed with National Futures Association in accordance with the instructions thereto. The request for withdrawal must be made by a person duly authorized by the registrant and must specify:

* * * * *

(6) If a basis for withdrawal from registration under paragraph (a)(1) of this section is that the registrant has ceased engaging in activities requiring registration, then, with respect to each capacity for which the registrant has ceased such activities:

(i) That all customer, retail forex customer or option customer agreements, if any, have been terminated;

(ii) That all customer, retail forex customer or option customer positions, if any, have been transferred on behalf of customers or option customers or closed;

(iii) That all customer, retail forex customer or option customer cash balances, securities, or other property, if any, have been transferred on behalf of customers, retail forex customers or option customers or returned, and that there are no obligations to customers, retail forex customers or option customers outstanding;

(iv) In the case of a commodity pool operator, that all interests in, and assets of, any commodity pool have been redeemed, distributed, or transferred, on behalf of the participants therein, and that there are no obligations to such participants outstanding;

(v) In the case of a leverage transaction merchant:

(A) Either that all leverage customer agreements, if any, and all leverage contracts have been terminated, and that all leverage customer cash balances, securities or other property, if any, have been returned, or

(B) Alternatively, that pursuant to Commission approval, the leverage contract obligations of the leverage transaction merchant have been assumed by another leverage transaction merchant and all leverage customer cash balances, securities or other property, if any, have been transferred to such leverage transaction merchant on behalf of leverage customers or returned, and that there are no obligations to leverage customers outstanding;

(vi) The nature and extent of any pending customer, retail forex customer, option customer, leverage customer, or commodity pool participant claims against the registrant, and, to the best of the registrant's knowledge and belief, the nature and extent of any anticipated or threatened customer, option customer, leverage customer, or commodity pool participant claims against the registrant; and

(vii) In the case of a futures commission merchant or a retail foreign

exchange dealer which is a party to a guarantee agreement, that all such agreements have been or will be terminated in accordance with the provisions of § 1.10(j) of this chapter not more than thirty days after the filing of the request for withdrawal from registration.

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8–W, must be filed with the National Futures Association and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Clearing and Intermediary Oversight, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, any floor broker or floor trader requesting withdrawal from registration must file a copy of his Form 8–W with each contract market that has granted him trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

* * * * *

21. Section 3.44 is amended by revising paragraphs (a)(1) through (5) to read as follows:

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) * * *

(1) A properly completed guarantee agreement (Form 1–FR part B) from a futures commission merchant or retail foreign exchange dealer which is eligible to enter into such an agreement pursuant to § 1.10(j)(2) of this chapter;

(2) A Form 7–R properly completed in accordance with the instructions thereto;

(3) A Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, all of whom would be eligible for a temporary license if they had applied as associated persons.

(4) A certification executed by a person duly authorized by the futures commission merchant or retail foreign exchange dealer that has executed the guarantee agreement required by paragraph (a)(1) of this section, stating that:

(i) The futures commission merchant or retail foreign exchange dealer has verified the information on the Forms 8–R filed pursuant to paragraph (a)(3) of this section which relate to education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding three years; and

(ii) To the best of the futures commission merchant's or retail foreign exchange dealer's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its principals and each branch office manager of the applicant on the Form 7–R and Forms 8–R, as appropriate, is accurate and complete; and

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided*, that a principal who has a current Form 8–R on file with the National Futures Association or the Commission is not required to submit a fingerprint card.

* * * * *

22. Section 3.45 is amended by revising paragraph (b) to read as follows:

§ 3.45 Restrictions upon activities.

* * * * *

(b) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant or retail foreign exchange dealer other than the futures commission merchant or retail foreign exchange dealer which provided the initial guarantee agreement described in § 3.44(a)(1) of this subpart: *Provided,* That, at least 10 days prior to the effective date of the termination of the existing guarantee agreement in accordance with the provisions of § 1.10 (j)(4)(ii) or (j)(5) of this chapter, or such other period of time as the National Futures Association may allow for good cause shown, the applicant files with the National Futures Association—

(1) Written notice of such termination and

(2) A new guarantee agreement with another futures commission merchant or retail foreign exchange dealer effective the day following the last effective date of the existing guarantee agreement.

23. Section 3.50 is amended by revising paragraph (b)(2) to read as follows:

§ 3.50 Service.

* * * * *

(b) * * *

(2) Any futures commission merchant or retail foreign exchange dealer which has entered into a guarantee agreement in accordance with § 1.10(j) of this chapter, if the applicant or registrant is registered as or applying for registration as an introducing broker.

* * * * *

24. Section 3.60 is amended by revising paragraph (b)(2)(i)(B) to read as follows:

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

* * * * *

(b) * * *

(2)(i) * * *

(B) In the case of a sponsor which is a futures commission merchant, a retail foreign exchange dealer or a leverage transaction merchant, the sponsor is not subject to the reporting requirements of § 1.12(b), § 5.6(b) or § 31.7(b) of this chapter, respectively; and

* * * * *

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6*l,* 6m, 6n, 6*o,* 12a and 23.

26. Section 4.7 is amended by:

a. Revising paragraph (a)(1)(v)(B); and

b. Revising paragraph (a)(2)(i) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(a) * * *

(1) * * *

(v) * * *

(B) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding either the date of sale to that person of a pool participation in the exempt pool or the date that the person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums, together with NFA-specified minimum security deposit for retail forex transactions (as defined in section 5.1(m) of this chapter) for commodity interest transactions; or

* * * * *

(2) * * *

(i)(A) A futures commission merchant registered pursuant to section 4d of the Act, or a principal thereof;

(B) A retail foreign exchange dealer registered pursuant to section 2(c)(2)(B)(i)(II)(gg) of the Act, or a principal thereof;

* * * * *

27. Section 4.12 is amended by revising paragraph (b)(1)(i)(C) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) Will not enter into commodity interest transactions for which the aggregate initial margin and premiums, and NFA-specified minimum security deposit for retail forex transactions (as defined in § 5.1(m) of this chapter) exceed 10 percent of the fair market value of the pool's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided, however,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such 10 percent; and

* * * * *

28. Section 4.13 is amended by:

a. Revising paragraph (a)(3)(ii)(A): and

b. Revising paragraph (a)(3)(ii)(B)(*1*) to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) The aggregate initial margin, premiums, and NFA-specified minimum security deposit for retail forex transactions (as defined in section 5.1(m) of this chapter) required to establish such positions, determined at the time the most recent position was established, will not exceed 5 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided*, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such 5 percent; or

(B) * * *

(*1*) The term "notional value" shall be calculated for each such futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, and for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit, and for each such retail forex transaction, by calculating the value in U.S. Dollars of such transaction, at the time the transaction was established, excluding for this purpose the value in U.S. Dollars of offsetting long and short transactions, if any; and

* * * * *

29. Section 4.14 is amended by revising paragraph (a)(7) to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

* * * * *

(a) * * *

(7)(i) It is registered under the Act as a leverage transaction merchant and the person's trading advice is solely in connection with its business as a leverage transaction merchant;

(ii) It is registered under the Act as a retail foreign exchange dealer and the person's trading advice is solely in connection with its business as a retail foreign exchange dealer.

* * * * *

30. Section 4.23 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(7); and

c. Revising paragraph (b)(1) and (2) to read as follows:

§ 4.23 Recordkeeping.

(a) *Concerning the commodity pool:* (1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

* * * * *

(7) Copies of each confirmation of a commodity interest transaction of the pool, each purchase and sale statement and each monthly statement for the pool received from a futures commission merchant or retail foreign exchange dealer.

* * * * *

(b) *Concerning the commodity pool operator:* (1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant or retail foreign exchange dealer carrying the account and the introducing broker, if any whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

(i) The commodity pool operator relating to a personal account of the pool operator; and

(ii) Each principal of the pool operator relating to a personal account of such principal.

* * * * *

31. Section 4.24 is amended by:

a. Revising paragraph (b)(1) introductory text and the first three sentences of the Risk Disclosure Statement in paragraph (b)(1);

b. Adding paragraph (b)(4);

c. Revising paragraph (e)(6);

d. Revising paragraph (g);

e. Revising paragraphs (h)(2) and (h)(4)(iii);

f. Revising paragraph (i)(2)(ii);

g. Redesignating paragraph (i)(2)(xii) as paragraph (i)(2)(xiii) and adding new paragraph (i)(2)(xii);

h. Revising paragraphs (j)(1)(vi) and (j)(3); and

i. Revising paragraphs (l)(1)(iii), (l)(2) introductory text and (l)(2)(i).

The addition and revisions to read as follows:

§ 4.24 General disclosures required.

* * * * *

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions.

RISK DISCLOSURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT COMMODITY INTEREST TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL. * * *

* * * * *

(4) If the pool may engage in retail Forex transactions, the Risk Disclosure Statement must further state:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY POOL MAY ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING. SUCH TRADING IS NOT CONDUCTED IN THE INTERBANK MARKET. THE FUNDS THAT THE POOL USES FOR OFF-EXCHANGE FOREIGN CURRENCY TRADING WILL NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTION CONTRACTS. IF THE POOL DEPOSITS SUCH FUNDS WITH A COUNTERPARTY AND THAT COUNTERPARTY BECOMES INSOLVENT, THE POOL'S CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY MAY NOT BE TREATED AS A COMMODITY CUSTOMER CLAIM FOR PURPOSES OF SUBCHAPTER IV OF CHAPTER 7 OF THE BANKRUPTCY CODE AND THE REGULATIONS THEREUNDER. THE POOL MAY BE A GENERAL CREDITOR AND ITS CLAIM MAY BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN POOL FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF PRIORITY AND OTHER GENERAL CREDITORS.

* * * * *

(e) * * *

(6) If known, the futures commission merchant and/or retail foreign exchange dealer through which the pool will execute its trades, and, if applicable, the introducing broker through which the pool will introduce its trades to the futures commission merchant and/or retail foreign exchange dealer.

* * * * *

(g) *Principal risk factors.* A discussion of the principal risk factors of participation in the offered pool. This discussion must include, without limitation, risks relating to volatility, leverage, liquidity, counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed and investment activity (including retail forex transactions) expected to be engaged in by the offered pool.

(h) * * *

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants and/or retail foreign exchange dealers carrying the pool's accounts shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

* * * * *

(4) * * *

(iii) If assets deposited by the pool as margin or as security deposit generate income, to whom that income will be paid.

(i) * * *

(2) * * *

(ii) Brokerage fees and commissions, including interest income paid to futures commission merchants, and any fees incurred to maintain an open position in retail forex transactions;

* * * * *

(xii) Any costs or fees included in the spread between bid and asked prices for retail forex transactions; and

* * * * *

(j) * * *

(1) * * *

(vi) Any other person providing services to the pool or soliciting participants for the pool, or acting as a counterparty to the pool's retail forex transactions (as defined in section 5.1(m) of this chapter).

* * * * *

(3) Included in the description of such conflicts must be any arrangement whereby a person may benefit, directly or indirectly, from the maintenance of the pool's account with the futures commission merchant and/or retail foreign exchange dealer, or from the introduction of the pool's account to a futures commission merchant and/or retail foreign exchange dealer by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or funds or other investments.

* * * * *

(l) * * *

(1) * * *

(iii) The pool's futures commission merchants and/or retail foreign exchange dealers and its introducing brokers, if any.

(2) With respect to a futures commission merchant and/or retail foreign exchange dealer or an introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

* * * * *

32. Section 4.25 is amended by revising paragraph (c)(3)(ii) to read as follows:

§ 4.25 Performance disclosures.

* * * * *

(c) * * *

(3) * * *

(ii) If a major commodity trading advisor has not previously traded accounts, the pool operator must prominently display the following statement:

(Name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY TRADING AUTHORITY OVER (percentage of the pool's funds available for commodity interest trading allocated to that trading advisor) PERCENT OF THE POOL'S COMMODITY INTEREST TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS.

* * * * *

Subpart C—Commodity Trading Advisors

33. Section 4.30 is revised to read as follows:

§ 4.30 Prohibited activities.

No commodity trading advisor may solicit, accept or receive from an existing or prospective client funds,

securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client; *Provided, however,* That this section shall not apply to a future commission merchant that is registered as such under the Act or to a leverage transaction merchant that is registered as a commodity trading advisor under the Act or to a retail foreign exchange dealer that is registered as such under the Act.

34. Section 4.33 is amended by:

a. Revising paragraph (a)(6); and

b. Revising paragraphs (b)(1) and (2) to read as follows:

§ 4.33 Recordkeeping.

* * * * *

(a) * * *

(6) Copies of each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement received from a futures commission merchant or a retail foreign exchange dealer.

* * * * *

(b) Concerning the commodity trading advisor:

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

(i) The commodity trading advisor relating to a personal account of the trading advisor; and

(ii) Each principal of the trading advisor relating to a personal account of such principal.

* * * * *

35. Section 4.34 is amended by:

a. Revising paragraph (b);

b. Revising paragraph (e)(2);

c. Revising paragraphs (g) and (h);

d. Revising paragraph (i)(2);

e. Revising paragraphs (j)(1) and (j)(3);

f. Revising paragraphs (k)(1)(ii), (k)(1)(iii), (k)(2) introductory text, and (k)(2)(i) to read as follows:

§ 4.34 General disclosures required.

* * * * *

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITY INTERESTS CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

IF YOU PURCHASE OR SELL A COMMODITY FUTURES CONTRACT OR SELL A COMMODITY OPTION OR ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS OR SECURITY DEPOSIT AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUESTED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."

THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS" OR "STOP-LIMIT" ORDER, WILL NOT NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

A "SPREAD" POSITION MAY NOT BE LESS RISKY THAN A SIMPLE "LONG" OR "SHORT" POSITION.

THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY INTEREST TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS, AT PAGE (insert page number), A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY INTEREST MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY INTEREST TRADING BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2)(i) If the commodity trading advisor may trade foreign futures or options contracts pursuant to the offered trading program, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD

INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.

(ii) If the commodity trading advisor may engage in retail forex transactions pursuant to the offered trading program, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING. SUCH TRADING IS NOT CONDUCTED IN THE INTERBANK MARKET. THE FUNDS DEPOSITED WITH A COUNTERPARTY FOR SUCH TRANSACTIONS WILL NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTION CONTRACTS. IF THE COUNTERPARTY BECOMES INSOLVENT AND YOU HAVE A CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY, YOUR CLAIM MAY NOT BE TREATED AS A COMMODITY CUSTOMER CLAIM FOR PURPOSES OF SUBCHAPTER IV OF CHAPTER 7 OF THE BANKRUPTCY CODE AND REGULATIONS THEREUNDER. YOU MAY BE A GENERAL CREDITOR AND YOUR CLAIM MAY BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF PRIORITY AND OTHER GENERAL CREDITORS.

FURTHER, YOU SHOULD CAREFULLY REVIEW THE INFORMATION CONTAINED IN THE RISK DISCLOSURE STATEMENT OF THE FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER THAT YOU SELECT TO CARRY YOUR ACCOUNT.

(3) If the commodity trading advisor is not also a registered futures commission merchant or a registered retail foreign exchange dealer, the trading advisor must make the additional following statement in the Risk Disclosure Statement, to be included as the last paragraph thereof:

THIS COMMODITY TRADING ADVISOR IS PROHIBITED BY LAW FROM ACCEPTING FUNDS IN THE TRADING ADVISOR'S NAME FROM A CLIENT FOR TRADING COMMODITY INTERESTS. YOU MUST PLACE ALL FUNDS FOR TRADING IN THIS TRADING PROGRAM DIRECTLY WITH A FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER, AS APPLICABLE.

* * * * *

(e) * * *

(2) The futures commission merchant and/or retail foreign exchange dealer with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant or retail foreign exchange dealer with which it will maintain its account, the trading advisor must make a statement to that effect; and

* * * * *

(g) *Principal risk factors.* A discussion of the principal risk factors of this trading program. This discussion must include, without limitation, risks due to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the trading program and the types of transactions and investment activity expected to be engaged in pursuant to such program (including retail forex transactions, if any).

(h) Trading program. A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants and/or retail foreign exchange dealers carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

(i) * * *

(2) Where any fee is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits," "net gains," "pips" or "bid-asked spread," the trading advisor must explain how such base amount will be calculated. Where any fee is based on the difference between bid and asked prices on retail forex transactions (as defined in § 5.1 of this chapter), the trading advisor must explain how such fee will be calculated;

* * * * *

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the trading program on the part of:

(i) The commodity trading advisor;

(ii) Any futures commission merchant and/or retail foreign exchange dealer with which the client will be required to maintain its commodity interest account;

(iii) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant and/or retail foreign exchange dealer; and

(iv) Any principal of the foregoing.

* * * * *

(3) Included in the description of any such conflict must be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant and/or retail foreign exchange dealer, or the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) * * *

(1) * * *

(ii) Any futures commission merchant or retail foreign exchange dealer with which the client will be required to maintain its commodity interest account; and

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer.

(2) With respect to a futures commission merchant, retail foreign exchange dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

* * * * *

36. Part 5 is added to read as follows:

PART 5—OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS

Sec.

5.1 Definitions.
5.2 Prohibited transactions.
5.3 Registration of persons engaged in retail forex transactions.
5.4 Applicability of part 4 of this chapter to commodity pool operators and commodity trading advisors.
5.5 Distribution of "Risk Disclosure Statement" by retail foreign exchange dealers, futures commission merchants and introducing brokers regarding retail forex transactions.
5.6 Maintenance of minimum financial requirements by retail foreign exchange dealers and futures commission

merchants offering or engaging in retail forex transactions.
5.7 Minimum financial requirements for retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.
5.8 Aggregate retail forex assets.
5.9 Security deposits for retail forex transactions.
5.10 Risk assessment recordkeeping requirements for retail foreign exchange dealers.
5.11 Risk assessment reporting requirements for retail foreign exchange dealers.
5.12 Financial reports of retail foreign exchange dealers.
5.13 Reporting to customers of retail foreign exchange dealers and futures commission merchants; monthly and confirmation statements.
5.14 Records to be kept by retail foreign exchange dealers and futures commission Merchants.
5.15 Unlawful representations.
5.16 Prohibition of guarantees against loss.
5.17 Authorization to trade.
5.18 Trading and operational standards.
5.19 Pending legal proceedings.
5.20 Special calls for account and transaction information.
5.21 Supervision.
5.22 Registered futures association membership.
5.23 Notice of bulk transfers and bulk liquidations.
5.24 Applicability of other parts of this chapter.
5.25 Applicability of the Act.

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6*o*, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

§ 5.1 Definitions.

(a) *Affiliated person of a futures commission merchant* means a person described in section 2(c)(2)(B)(i)(II)(cc)(BB) of the Act;

(b) *Aggregate retail forex assets* means an amount of liquid assets held in accordance with section 5.8 of this part;

(c) *Associated person of an affiliated person of a futures commission merchant* means any natural person associated with an affiliated person of a futures commission merchant as a partner, officer or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(1) The solicitation or acceptance of retail forex customers' orders (other than in a clerical capacity); or

(2) The supervision of any person or persons so engaged;

(d)(1) *Commodity pool operator,* for purposes of this part, means any person who operates or solicits funds, securities, or property for a pooled investment vehicle that is not an eligible contract participant as defined in section 1a(12) of the Act, and that engages in retail forex transactions;

(2) *Associated person of a commodity pool operator,* for purposes of this part, means any natural person associated with a commodity pool operator as defined in paragraph (d)(1) of this section as a partner, officer, employee, consultant or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation of funds, securities, or property for a participation in a pooled investment vehicle; or

(ii) The supervision of any person or persons so engaged;

(e)(1) *Commodity trading advisor,* for purposes of this part, means any person who exercises discretionary trading authority or obtains written authorization to exercise discretionary trading authority over any account for or on behalf of any person that is not an eligible contract participant as defined in section 1a(12) of the Act, in connection with retail forex transactions;

(2) *Associated person of a commodity trading advisor,* for purposes of this part, means any natural person associated with a commodity trading advisor as defined in paragraph (e)(1) of this section as a partner, officer, employee, consultant or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation of a client's or prospective client's discretionary account; or

(ii) The supervision of any person or persons so engaged;

(f)(1) *Introducing broker,* for purposes of this part, means any person who solicits or accepts orders from a customer that is not an eligible contract participant as defined in section 1a(12) of the Act, in connection with retail forex transactions;

(2) *Associated person of an introducing broker,* for purposes of this part, means any natural person associated with an introducing broker as defined in paragraph (g)(1) of this section as a partner, officer, employee, or agent (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation or acceptance of retail forex customers' orders (other than in a clerical capacity); or

(ii) The supervision of any person or persons so engaged;

(g) *Primarily or substantially* means, when used to describe the extent of a futures commission merchant's engagement in the activities described in section 1a(20) of the Act, that:

(1) Such activities account for more than fifty percent of the futures commission merchant's gross revenues, computed in accordance with generally accepted accounting principles, on an annual basis;

(2) The futures commission merchant receives gross revenues, computed in accordance with generally accepted accounting principles, from such activities in excess of $500,000 in any twelve month period; or

(3) The futures commission merchant is a clearing member of a registered derivatives clearing organization.

(h)(1) *Retail foreign exchange dealer* means any person that is, or that offers to be, the counterparty to a retail forex transaction, except for a person described in sub-paragraph (aa), (bb), (cc)(AA), (dd), (ee) or (ff) of section 2(c)(2)(B)(i)(II) of the Act;

(2) *Associated person of a retail foreign exchange dealer* means any natural person associated with a retail foreign exchange dealer as defined in paragraph (i)(1) of this section as a partner, officer or employee (or any natural person occupying a similar status or performing similar functions), in any capacity which involves:

(i) The solicitation or acceptance of retail forex customers' orders (other than in a clerical capacity); or

(ii) The supervision of any person or persons so engaged;

(i) *Retail forex account* means the account of a person who is not an eligible contract participant as defined in section 1a(12) of the Act, established with a retail foreign exchange dealer or a futures commission merchant, in which account retail forex transactions (including options on contracts for the purchase or sale of foreign currency) with such retail foreign exchange dealer or futures commission merchant as counterparty are undertaken, or which account is established in order to enter into such transactions.

(j) *Retail forex account agreement* means the contractual agreement between a futures commission merchant or retail foreign exchange dealer and any person who is not an eligible contract participant as defined in section 1a(12) of the Act, which agreement contains the terms governing the person's retail forex account with such futures commission merchant or retail foreign exchange dealer.

(k) *Retail forex customer* means a person, other than an eligible contract participant as defined in section 1a(12) of the Act, acting on its own behalf and trading in any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act.

(l) *Retail forex obligation* means the net credit balance at a retail foreign exchange dealer or futures commission merchant that would be obtained by combining all money, securities and property deposited by a retail forex customer into a retail forex account or accounts, adjusted for the realized and unrealized net profit or loss, if any, accruing on the open trades, contracts or transactions in the retail forex account or accounts, without including any retail forex customers' accounts that contain negative net liquidating balances.

(m) *Retail forex transaction* means any account, agreement, contract or transaction described in section 2(c)(2)(B) or 2(c)(2)(C) of the Act. A retail forex transaction does not include an account, agreement, contract or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option thereon) that is executed, traded on or otherwise subject to the rules of a contract market designated pursuant to section 5(a) of the Act or a derivatives transaction execution facility registered pursuant to section 5a(c) of the Act.

§ 5.2 Prohibited transactions.

(a) *Scope.* The provisions of this section shall be applicable to any retail forex transaction.

(b) *Fraudulent conduct prohibited.* It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any retail forex transaction:

(1) To cheat or defraud or attempt to cheat or defraud any person;

(2) Willfully to make or cause to be made to any person any false report or statement or cause to be entered for any person any false record; or

(3) Willfully to deceive or attempt to deceive any person by any means whatsoever.

(c) *Acting as counterparty and exercising discretion prohibited.* (1) No person who acts as the counterparty for any retail forex transaction may do so for an account for which the person or any affiliate of the person is authorized (by contract, power of attorney or otherwise) to cause transactions to be effected without the client's specific authorization.

(2) For purposes of this paragraph (c), an "affiliate" of a person means a person controlling, controlled by or under common control with, the first person.

§ 5.3 Registration of persons engaged in retail forex transactions.

(a) Subject to paragraph (b) of this section, each of the following is subject to the registration provisions under the Act and to part 3 of this chapter:

(1)(i) Any affiliated person of a futures commission merchant, as defined in section 5.1(a) of this part, which affiliated person:

(A) Solicits or accepts orders from any person that is not an eligible contract participant in connection with any retail forex transaction; or

(B) Accepts money, securities, or property (or extends credit in lieu thereof) in connection with such solicitation or acceptance of orders in order to engage in any retail forex transaction, is required to register as a retail foreign exchange dealer; and

(ii) Any associated person of an affiliated person of a futures commission merchant, as defined in § 5.1(c) of this part, is required to register as an associated person of an affiliated person of a futures commission merchant.

(2)(i) Any commodity pool operator, as defined in § 5.1(d)(1) of this part, is required to register as a commodity pool operator;

(ii) Any associated person of a commodity pool operator, as defined in § 5.1(d)(2) of this part, is required to register as an associated person of a commodity pool operator;

(3)(i) Any commodity trading advisor, as defined in § 5.1(e)(1) of this part, is required to register as a commodity trading advisor;

(ii) Any associated person of a commodity trading advisor, as defined in § 5.1(e)(2) of this part, is required to register as an associated person of a commodity trading advisor;

(4)(i) Any person registered as a futures commission merchant:

(A) That is not primarily or substantially engaged in the business activities described in section 1a(20) of the Act;

(B) That solicits or accepts orders from any person that is not an eligible contract participant in connection with any retail forex transaction; and

(C) That accepts money, securities, or property (or extends credit in lieu thereof) in connection with such solicitation or acceptance of orders in order to engage in retail forex transactions, is required to register as a retail foreign exchange dealer;

(ii) Any associated person of a futures commission merchant described in paragraph (a)(4)(i) of this section is required to register as an associated person of a futures commission merchant;

(5)(i) Any introducing broker, as defined in § 5.1(f)(1) of this part, is required to register as an introducing broker;

(ii) Any associated person of an introducing broker, as defined in § 5.1(f)(2) of this part, is required to register as an associated person of an introducing broker;

(6)(i) Any retail foreign exchange dealer, as defined in § 5.1(h)(1) of this part is required to register as a retail foreign exchange dealer;

(ii) Any associated person of a retail foreign exchange dealer, as defined in § 5.1(h)(2) of this part, is required to register as an associated person of a retail foreign exchange dealer;

(b) Any person described in paragraph (a) of this section that is already registered in the required capacity specified in paragraph (a) is not required under this section to register twice in the same capacity; Provided, however, that a person already registered as an associated person of one class of registrant may also be required to register as an associated person of another class of registrant in order to comply with this section.

§ 5.4 Applicability of part 4 of this chapter to commodity pool operators and commodity trading advisors.

Part 4 of this chapter applies to any person required pursuant to the provisions of this part 5 to register as a commodity pool operator or as a commodity trading advisor. Failure by any such person to comply with the requirements of part 4 will constitute a violation of this section and the relevant section of part 4.

§ 5.5 Distribution of "Risk Disclosure Statement" by retail foreign exchange dealers, futures commission merchants and introducing brokers regarding retail forex transactions.

(a) Except as provided in § 5.23 of this part, no retail foreign exchange dealer, futures commission merchant, or in the case of an introduced account no introducing broker, may open an account that will engage in retail forex transactions for a retail forex customer, unless the retail foreign exchange dealer, futures commission merchant or introducing broker first:

(1)(i) In the case of a retail foreign exchange dealer or a person required to register as an introducing broker solely by reason of this part, furnishes the retail forex customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section and the disclosure required by paragraph (e) of this section;

(ii) In the case of a futures commission merchant or a person required to register as an introducing broker because it engages in the activities described in § 1.3(mm) of this chapter, furnishes the retail forex

customer with a separate written disclosure statement containing only the language set forth in paragraph (b) of this section and the disclosure required by paragraph (e) of this section; *Provided, however,* that the disclosure statement may be attached to other documents as the initial page(s) of such documents and as the only material on such page(s); and

(2) Receives from the retail forex customer an acknowledgment signed and dated by the retail forex customer that he received and understood the disclosure statement.

(b) The language set forth in the written disclosure statement required by paragraph (a) of this section shall be as follows:

Risk Disclosure Statement

OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS INVOLVE THE LEVERAGED TRADING OF CONTRACTS DENOMINATED IN FOREIGN CURRENCY CONDUCTED WITH A FUTURES COMMISSION MERCHANT OR A RETAIL FOREIGN EXCHANGE DEALER AS YOUR COUNTERPARTY.

BECAUSE OF THE LEVERAGE AND THE OTHER RISKS DISCLOSED HERE, YOU CAN RAPIDLY LOSE ALL OF THE FUNDS YOU DEPOSIT FOR SUCH TRADING AND YOU MAY LOSE MORE THAN YOU DEPOSIT.

YOU SHOULD BE AWARE OF AND CAREFULLY CONSIDER THE FOLLOWING POINTS BEFORE DETERMINING WHETHER SUCH TRADING IS APPROPRIATE FOR YOU.

(1) TRADING IS NOT ON A REGULATED MARKET OR EXCHANGE—YOUR DEALER IS YOUR TRADING PARTNER WHICH IS A DIRECT CONFLICT OF INTEREST. BEFORE YOU ENGAGE IN ANY RETAIL FOREIGN EXCHANGE TRADING, YOU SHOULD CONFIRM THE REGISTRATION STATUS OF YOUR COUNTERPARTY.

The off-exchange foreign currency trading you are entering into is not conducted on an interbank market, nor is it conducted on a futures exchange subject to regulation as a designated contract market by the Commodity Futures Trading Commission. The foreign currency trades you transact are trades with the futures commission merchant or retail foreign exchange dealer as your counterparty. WHEN YOU SELL, THE DEALER IS THE BUYER. WHEN YOU BUY, THE DEALER IS THE SELLER. As a result, when you lose money trading, your dealer is making money on such trades, in addition to any fees, commissions, or spreads the dealer may charge.

(2) AN ELECTRONIC TRADING PLATFORM FOR RETAIL FOREIGN CURRENCY TRANSACTIONS IS NOT AN EXCHANGE. IT IS AN ELECTRONIC CONNECTION FOR ACCESSING YOUR DEALER. THE TERMS OF AVAILABILITY OF SUCH A PLATFORM ARE GOVERNED ONLY BY YOUR CONTRACT WITH YOUR DEALER.

Any trading platform that you may use to enter off-exchange foreign currency transactions is only connected to your futures commission merchant or retail foreign exchange dealer. You are accessing that trading platform only to transact with your dealer. You are not trading with any other entities or customers of the dealer by accessing such platform. The availability and operation of any such platform, including the consequences of the unavailability of the trading platform for any reason, is governed only by the terms of your account agreement with the dealer.

(3) YOUR DEPOSITS WITH THE DEALER HAVE NO REGULATORY PROTECTIONS.

All of your rights associated with your retail forex trading, including the manner and denomination of any payments made to you, are governed by the contract terms established in your account agreement with the futures commission merchant or retail foreign exchange dealer. Funds deposited by you with a futures commission merchant or retail foreign exchange dealer for trading off-exchange foreign currency transactions are not subject to the customer funds protections provided to customers trading on a contract market that is designated by the Commodity Futures Trading Commission. Your dealer may commingle your funds with its own operating funds or use them for other purposes. In the event your dealer becomes bankrupt, any funds the dealer is holding for you in addition to any amounts owed to you resulting from trading, whether or not any assets are maintained in separate deposit accounts by the dealer, may be treated as an unsecured creditor's claim.

(4) YOU ARE LIMITED TO YOUR DEALER TO OFFSET OR LIQUIDATE ANY TRADING POSITIONS SINCE THE TRANSACTIONS ARE NOT MADE ON AN EXCHANGE OR MARKET, AND YOUR DEALER MAY SET ITS OWN PRICES.

Your ability to close your transactions or offset positions is limited to what your dealer will offer to you, as there is no other market for these transactions. Your dealer may offer any prices it wishes, and it may offer prices derived from outside sources or not in its discretion. Your dealer may establish its prices by offering spreads from third party prices, but it is under no obligation to do so or to continue to do so. Your dealer may offer different prices to different customers at any point in time on its own terms. The terms of your account agreement alone govern the obligations your dealer has to you to offer prices and offer offset or liquidating transactions in your account and make any payments to you. The prices offered by your dealer may or may not reflect prices available elsewhere at any exchange, interbank, or other market for foreign currency.

(5) PAID SOLICITORS MAY HAVE UNDISCLOSED CONFLICTS

The futures commission merchant or retail foreign exchange dealer may compensate introducing brokers for introducing your account in ways which are not disclosed to you. Such paid solicitors are not required to have, and may not have, any special expertise in trading, and may have conflicts of interest based on the method by which they are compensated. Solicitors working on behalf of futures commission merchants and retail foreign exchange dealers are required to register. You should confirm that they are, in fact registered. You should thoroughly investigate the manner in which all such solicitors are compensated and be very cautious in granting any person or entity authority to trade on your behalf. You should always consider obtaining dated written confirmation of any information you are relying on from your dealer or a solicitor in making any trading or account decisions.

FINALLY, YOU SHOULD THOROUGHLY INVESTIGATE ANY STATEMENTS BY ANY DEALERS OR SALES REPRESENTATIVES WHICH MINIMIZE THE IMPORTANCE OF, OR CONTRADICT, ANY OF THE TERMS OF THIS RISK DISCLOSURE. SUCH STATEMENTS MAY INDICATE POTENTIAL SALES FRAUD.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF TRADING OFF-EXCHANGE FOREIGN CURRENCY TRANSACTIONS WITH A FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER.

I hereby acknowledge that I have received and understood this risk disclosure statement.

_____

Date

_____

Signature of Customer

(c) The acknowledgment required by paragraph (a) of this section must be retained by the retail foreign exchange dealer, futures commission merchant or introducing broker in accordance with § 1.31 of this chapter.

(d) This section does not relieve a retail foreign exchange dealer, futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.

(e)(1) Immediately following the language set forth in paragraph (b) of this section, the statement required by paragraph (a) of this section shall include, for each of the most recent four quarters during which the counterparty maintained retail forex accounts:

(i) The total number of non discretionary retail forex accounts maintained by the retail foreign exchange dealer or futures commission merchant;

(ii) The percentage of such accounts that were profitable; and

(iii) the percentage of such accounts that were not profitable.

(2) Identification of retail forex accounts for purposes of this disclosure and calculation of each such account's profit or loss must be made in accordance with § 5.18(i) of this part. Such statement of profitable trades shall include the following legend: PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS. Each retail foreign exchange dealer or futures commission merchant shall provide, upon request, to any retail forex customer or prospective retail forex customer the total number of non discretionary retail forex accounts maintained by such retail foreign exchange dealer or futures commission merchant, the percentage of such accounts that were profitable, and the percentage of such accounts that were unprofitable, calculated in accordance with § 5.18(i) of this part, for each quarter during the most recent five year period during which such retail foreign exchange dealer or futures commission merchant maintained non discretionary retail forex accounts.

§ 5.6 Maintenance of minimum financial requirements by retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.

(a) Each futures commission merchant offering or engaging in retail forex transactions or who files an application for registration as a futures commission merchant that will offer or engage in retail forex transactions and each person registered as a retail foreign exchange dealer or who files an application for registration as a retail foreign exchange dealer, who knows or should have known that its adjusted net capital at any time is less than the minimum required by § 5. 7 of this part or by the capital rule of a registered futures association of which it is a member, must:

(1) Give telephonic notice, to be confirmed in writing by facsimile notice, that the applicant's or registrant's adjusted net capital is less than that required by § 5.7 of this part. The notice must be given immediately after the applicant or registrant knows or should know that its adjusted net capital is less than that required by any of the aforesaid rules to which the applicant or registrant is subject; and

(2) Provide together with such notice documentation in such form as necessary to adequately reflect the applicant's or registrant's capital condition as of any date such person's adjusted net capital is less than the minimum required. The applicant or registrant must provide similar documentation for other days as the Commission may request.

(b) Each applicant or registrant, who knows or should have known that its adjusted net capital at any time is less than the greatest of:

(1) $22,000,000;

(2) 110 percent of the amount required by § 5.7(a)(1)(i)(B) of this part; or

(3) 110 percent of the amount of adjusted net capital required by a registered futures association of which the futures commission merchant or retail foreign exchange dealer is a member, must file written notice to that effect within 24 hours of such event.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, provide facsimile notice of such fact, specifying the books and records which have not been made or which are not current, and within 48 hours after giving such notice file a written report stating what steps have been and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to § 1.16(e)(2) of this chapter, of the existence of any material inadequacy, as specified in § 1.16(d)(2) of this chapter, such applicant or registrant must give facsimile notice of such material inadequacy within 24 hours, and within 48 hours after giving such notice file a written report stating what steps have been and are being taken to correct the material inadequacy.

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or written report as required by § 5.6 of this part, that self-regulatory organization must immediately report this failure by telephone, confirmed in writing immediately by facsimile notice, as provided in paragraph (h) of this section.

(f) A retail foreign exchange dealer or a futures commission merchant offering or engaging in retail forex transactions shall provide written notice of a substantial reduction in capital as compared to that last reported in a financial report filed with the Commission pursuant to § 5.12 of this part. This notice shall be provided as follows:

(1) If any event or series of events, including any withdrawal, advance, loan or loss cause, on a net basis, a reduction in net capital of 20 percent or more, notice must be provided within two business days of the event or series of events causing the reduction; and

(2) If the equity capital of the retail foreign exchange dealer or futures commission merchant offering or engaging in retail forex transactions or the equity capital of a subsidiary or affiliate of the retail foreign exchange dealer or futures commission merchant offering or engaging in retail forex transactions consolidated pursuant to § 1.17(f) of this chapter would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital of 30 percent or more, notice must be provided at least two business days prior to the withdrawal, advance or loan that would cause the reduction: Provided, however, That the provisions of paragraphs (f)(1) and (f)(2) of this section do not apply to any retail foreign exchange transaction in the ordinary course of business between a retail foreign exchange dealer and any affiliate where the retail foreign exchange dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

(3) Upon receipt of such notice from a futures commission merchant offering or engaging in retail forex transactions or a retail foreign exchange dealer, the Director of the Division of Clearing and Intermediary Oversight or the Director's designee may require that the futures commission merchant offering or engaging in retail forex transactions or retail foreign exchange dealer provide or cause a Material Affiliated Person (as that term is defined in § 5.10(a)(2) of this part) to provide, within three business days from the date of the request or such shorter period as the Director or designee may specify, such other information as the Director or designee determines to be necessary based upon market conditions, reports provided by the retail foreign exchange dealer or futures commission merchant offering or engaging in retail forex transactions, or other available information.

(g) Whenever a person registered as a futures commission merchant offering or engaging in retail forex transactions or a retail foreign exchange dealer knows or should know that the total amount of its retail forex obligation exceeds the amount of the aggregate retail forex assets the registrant maintains in accordance with the provisions of § 5.8 of this chapter, the registrant must report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice.

(h) Every notice and written report required to be given or filed with the Commission by this section by an applicant must be filed with the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located, and with the National Futures Association. Every notice and written report required to be given or filed with the Commission by this section by a registrant or self-regulatory organization must be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located, and with the registrant's designated self-regulatory organization. In addition, every notice and written report required to be given by this section must also be filed with the Chief Accountant of the Division of Clearing and Intermediary Oversight at the Commission's principal office in Washington, DC.

(i) In lieu of filing paper copies with the Commission, all filings or other notices prepared by a futures commission merchant or retail foreign exchange dealer pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant, retail foreign exchange dealer or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

§ 5.7 Minimum financial requirements for retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions.

(a)(1)(i) Each futures commission merchant offering or engaging in retail forex transactions and each retail foreign exchange dealer must maintain adjusted net capital equal to or in excess of the greatest of:

(A) $20,000,000;

(B) $20,000,000 plus five percent of the futures commission merchant's or retail foreign exchange dealer's total retail forex obligation in excess of $10,000,000;

(C) any amount required under § 1.17 of this chapter, as applicable; or

(D) the amount of adjusted net capital required by a registered futures association of which the futures commission merchant or retail foreign exchange dealer is a member.

(ii) Section 1.17 of this chapter shall apply to retail foreign exchange dealers as if such retail foreign exchange dealers were futures commission merchants, or as applicable, applicants or registrants, as stated in § 1.17 for the purpose of determining the adjusted net capital under this section. For the purpose of applying this section, "applicant" or "registrant" shall include retail foreign exchange dealers and futures commission merchants offering or engaging in retail forex transactions and applicants therefore.

(2) No person applying for registration as a retail foreign exchange dealer or a futures commission merchant that will engage in retail forex transactions shall be so registered unless such person affirmatively demonstrates to the satisfaction of a registered futures association that it complies with the financial requirements of this section.

(3) Each registrant must be in compliance with this section at all times and must be able to demonstrate such compliance to the satisfaction of the Commission or the registrant's designated self-regulatory organization.

(4) A registrant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, shall, as directed by and under the supervision of the Commission or the registrant's designated self-regulatory organization, either liquidate or transfer all retail forex accounts (including the novation of retail forex contracts) and refund or transfer all funds associated with such retail forex accounts and immediately cease offering or engaging in retail forex transactions until such time as the firm is able to demonstrate to the Commission or the registrant's designated self-regulatory organization such compliance: *Provided, however,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the registrant's designated self-regulatory organization the ability to achieve compliance, the Commission or the registrant's designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days, or such additional time as determined by the Commission, in which to achieve compliance without having to liquidate positions or transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the registrant's designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

(b) For the purposes of this section:

(1) Where the applicant or registrant has an asset or liability which is defined in Securities Exchange Act Rule 15c3–1 (§ 240.15c3–1 of this title) the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital shall be in accordance with § 240.15c3–1 of this title, unless specifically stated otherwise in this section or in § 1.17 of this chapter.

(2) The adjusted net capital of an applicant or registrant for the purpose of this section shall be determined by the application of § 1.17 pursuant to paragraph (a)(1)(ii) of this section, with the following additions:

(i) All positions in retail forex accounts and other financial positions and instruments of the applicant or registrant must be marked to market and adjusted daily by referencing to current market prices or rates of exchange.

(ii) Current assets must exclude any retail forex account which liquidates to a deficit or contains a debit ledger balance only and is not secured in accordance with § 1.17(c)(3).

(iii) Current assets must exclude any unsecured receivable accrued from any over-the-counter transaction in foreign currency, options on foreign currency or options on contracts for the purchase or sale of foreign currency, or arising from the deposit of collateral or compensating balances with respect to such transactions, unless such unsecured receivable is from a person who is an eligible contract participant that also is:

(A) A bank or trust company regulated by a United States banking regulator;

(B) A broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority;

(C) A futures commission merchant registered with the Commission and a member of the National Futures Association;

(D) A retail foreign exchange dealer registered with the Commission and a member of the National Futures Association;

(E) An entity regulated as a foreign equivalent of any of the persons listed in paragraphs (b)(2)(iii)(A) through (D) of this section, if such person is regulated in a money center country as defined in § 1.49 of this chapter and recognized by the futures commission merchant's or retail foreign exchange dealer's designated self-regulatory organization as a foreign equivalent;

(F) Any other entity approved by the futures commission merchant's or retail foreign exchange dealer's designated self-regulatory organization.

(iv) The value attributed to any retail forex transaction that is an option shall be the difference between the option's exercise value or striking value and the market value of the underlying. In the case of a call, if the market value of the underlying is less than the exercise value or striking value of such call, it shall be given no value; and, in the case of a put, if the market value of the underlying is more than the exercise value or striking value of the put, it shall be given no value.

(v)(A) In computing adjusted net capital, the capital deductions set forth in § 1.17(c)(5)(ii) of this chapter shall apply to retail forex transactions other than options. The capital deductions which apply are six percent for net positions in Euros, British pounds, Canadian dollars, Japanese yen, or Swiss francs and 20 percent for net positions in all other foreign currencies, *Provided, however,* That there shall be no capital deductions for retail forex transactions covered (as defined in § 1.17(j) of this chapter) by the applicant or registrant by open futures contracts to the extent such futures contracts are not otherwise designated as cover for any other net capital purposes. For purposes of this paragraph (b)(2)(v)(A), such retail forex transactions shall be treated as if they were inventory and cover were therefore applicable. A retail foreign exchange dealer or futures commission merchant may not use an affiliate (unless approved by the firm's designated self-regulatory organization) or any person that is considered unregulated under the rules of the firm's designated self-regulatory organization to cover its currency positions for purposes of this section.

(B) In computing adjusted net capital, the capital deductions set forth in § 1.17(c)(5)(vi) of this chapter shall apply to all retail forex transactions that are options.

(C) For the purpose of applying capital deductions on open proprietary futures positions under § 1.17(c)(5)(x) of this chapter, net or individual positions in retail forex transactions shall not constitute cover under § 1.17(j) for the purpose of applying such charges.

(c) An applicant or registrant must prepare, and keep current, ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting the applicant's or registrant's asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all the applicant's or registrant's asset, liability and capital accounts are classified into the account classification subdivisions specified on Form 1–FR–FCM. Each applicant or registrant shall prepare and keep current such records.

(d) An applicant or registrant must make and keep as a record in accordance with § 5.14 of this part formal computations of its adjusted net capital and of its minimum financial requirements pursuant to this section as of the close of business each month and on other such dates called for by the Commission, the National Futures Association, or another self-regulatory organization of which the firm is a member. Such computations must be completed and made available for inspection by any representative of the Commission, the National Futures Association, a self-regulatory organization of which the firm is a member, or the United States Department of Justice commencing the first month-end after the date the application for registration is filed.

§ 5.8 Aggregate retail forex assets.

(a) Each retail foreign exchange dealer and futures commission merchant offering or engaging in retail forex transactions shall calculate its total retail forex obligation and shall at all times hold assets solely of the type permissible under § 1.25 of this chapter equal to or in excess of the total retail forex obligation at one or more qualifying institutions in the United States or money center countries as defined in § 1.49 of this chapter.

(b) For assets held in the United States, a qualifying institution is:

(1) A bank or trust company regulated by a United States banking regulator;

(2) A broker-dealer registered with the Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority; or

(3) A futures commission merchant registered with the Commission and a member of the National Futures Association.

(c) For assets held in a money center country, a qualifying institution is:

(1) A bank or trust company regulated in a money center country, *Provided* that the bank or trust company has regulatory capital in excess of $1 billion;

(2) An entity regulated in a money center country as an equivalent of a broker-dealer or futures commission merchant as determined by the retail foreign exchange dealer's or futures commission merchant's designated self-regulatory organization, *Provided* that the entity maintains regulatory capital in excess of $100 million; or

(3) A futures commission merchant registered with the Commission and a member of the National Futures Association.

(d) Assets held in a money center country are not eligible to meet the requirements of paragraph (a) of this section unless the retail foreign exchange dealer or futures commission merchant has entered into an agreement that is acceptable to the firm's designated self-regulatory organization and that authorizes the qualifying institution to provide account information to the Commission and the firm's designated self-regulatory organization.

(e) In computing its adjusted net capital pursuant to § 5.7 of this part, a retail foreign exchange dealer or futures commission merchant may not include aggregate retail forex assets as current assets or otherwise record any property received from retail forex customers as an asset without recording a corresponding liability to the retail forex customers.

§ 5.9 Security deposits for retail forex transactions.

(a) Each futures commission merchant engaging, or offering to engage, in retail forex transactions and each retail foreign exchange dealer must collect from each retail forex customer a minimum security deposit in the form of cash or other financial instruments that comply with the requirements specified in § 1.25 of this chapter for each retail forex transaction equal to:

(1) Ten percent of the notional value of the retail forex transaction;

(2) For short options, ten percent of the notional value of the retail forex transaction, plus the premium received by the futures commission merchant or retail foreign exchange dealer; or

(3) For long options, the full premium charged and received by the futures commission merchant or retail foreign exchange dealer.

(b) A futures commission merchant or retail foreign exchange dealer is required to collect additional security deposits from a retail forex customer or liquidate the retail forex customer's positions if the amount of the retail forex customer's security deposits maintained with the futures commission merchant or retail foreign exchange dealer are not sufficient to meet the requirements in paragraph (a) of this section.

§ 5.10 Risk assessment recordkeeping requirements for retail foreign exchange dealers.

(a) *Requirement to maintain and preserve information.* (1) Each retail foreign exchange dealer registered with the Commission pursuant to section 2(c)(2)(B)(i)(II)(gg) of the Act shall prepare, maintain and preserve the following information:

(i) An organizational chart which includes the retail foreign exchange dealer and each of its affiliated persons. Included in the organizational chart shall be a designation of which affiliated persons are "Material Affiliated Persons" as that term is used in paragraph (a)(2) of this section, which Material Affiliated Persons file routine financial or risk exposure reports with the Securities and Exchange Commission, a federal banking agency, an insurance commissioner or other similar official or agency of a state, or a foreign regulatory authority, and which Material Affiliated Persons are dealers in financial instruments with off-balance sheet risk and, if a Material Affiliated Person is such a dealer, whether it is also an end-user of such instruments;

(ii) Written policies, procedures, or systems concerning the retail foreign exchange dealer's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets of the retail foreign exchange dealer, the structure of debt capital, and sources of alternative funding;

(C) Establishing and maintaining internal controls with respect to market risk, credit risk, and other risks created by the retail foreign exchange dealer's trading activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in forex transactions, securities, futures contracts, commodity options, forward contracts and financial instruments; policies for hedging or managing risks created by trading activities or supervising accounts carried for affiliates, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities: *Provided, however,* that if the retail foreign exchange dealer has no such written policies, procedures or systems, it must so state in writing;

(iii) Fiscal year-end consolidated and consolidating balance sheets for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating balance sheets may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process. Any additional information required to be filed under § 5.11(a)(2)(iii) of this part shall also be maintained and preserved; and

(iv) Fiscal year-end consolidated and consolidating income statements and consolidated cash flow statements for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which shall include appropriate explanatory notes. The consolidating statements may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process. Any additional information required to be filed under § 5.11(a)(2)(iii) shall also be maintained and preserved.

(2) The determination of whether an affiliated person of a retail foreign exchange dealer is a Material Affiliated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the retail foreign exchange dealer and the affiliated person;

(ii) The overall financing requirements of the retail foreign exchange dealer and the affiliated person, and the degree, if any, to which the retail foreign exchange dealer and the affiliated person are financially dependent on each other;

(iii) The degree to which the retail foreign exchange dealer and the affiliated person directly or indirectly engage in over-the-counter transactions with each other;

(iv) The degree, if any, to which the retail foreign exchange dealer or its customers rely on the affiliated person for operational support or services in connection with the retail foreign exchange dealer's business;

(v) The level of market, credit or other risk present in the activities of the affiliated person; and

(vi) The extent to which the affiliated person has the authority or the ability to cause a withdrawal of capital from the retail foreign exchange dealer.

(3) For purposes of this section and § 5.11 of this part, the term Material Affiliated Person does not include a natural person.

(4) The information, reports and records required by this section shall be maintained and preserved, and made readily available for inspection, in accordance with the provisions of § 1.31 of this chapter.

(b) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic regulators.* A retail foreign exchange dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(i), (iii)

and (iv) of this section with respect to a Material Affiliated Person if:

(1) The Material Affiliated Person is required to maintain and preserve information pursuant to § 240.17h–1T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, and the retail foreign exchange dealer maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the records and reports maintained and filed on Form 17–H (or such other forms or reports as may be required) by the Material Affiliated Person with the Securities and Exchange Commission pursuant to §§ 240.17h–1T and 240.17h–2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt;

(2) In the case of a Material Affiliated Person (including a foreign banking organization) that is subject to examination by, or the reporting requirements of, a Federal banking agency, the retail foreign exchange dealer or such Material Affiliated Person maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person to the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(3) In the case of a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, the retail foreign exchange dealer or such Material Affiliated Person maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner.

(c)(1) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A retail foreign exchange dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraphs (a)(1)(iii) and (iv) of this section with respect to a Material Affiliated Person if such retail foreign exchange dealer maintains and makes available, or causes such Material Affiliated Person to make available, for inspection by the Commission in accordance with the provisions of this section copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority, provided that:

(i) The retail foreign exchange dealer agrees to use its best efforts to obtain from the Material Affiliated Person and to cause the Material Affiliated Person to provide, directly or through its foreign futures authority or other foreign regulatory authority, any supplemental information the Commission may request and there is no statute or other bar in the foreign jurisdiction that would preclude the retail foreign exchange dealer, the Material Affiliated Person, the foreign futures authority or other foreign regulatory authority from providing such information to the Commission; or

(ii) The foreign futures authority or other foreign regulatory authority with whom the Material Affiliated Person files such reports has entered into an information-sharing agreement with the Commission which is in effect as of the retail foreign exchange dealer's fiscal year-end and which will allow the Commission to obtain the type of information required herein.

(2) The retail foreign exchange dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term "Foreign Futures Authority" shall have the meaning set forth in section 1a(10) of the Act.

(d) *Exemptions.* The Commission may exempt any retail foreign exchange dealer from any provision of this section if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(e) *Location of records.* A retail foreign exchange dealer required to maintain records concerning Material Affiliated Persons pursuant to this section may maintain those records either at the principal office of the Material Affiliated Person or at a records storage facility, provided that, except as set forth in paragraph (c) of this section, the records are located within the boundaries of the United States and the records are kept and available for inspection in accordance with § 1.31 of this chapter. If such records are maintained at a place other than the retail foreign exchange dealer's principal place of business, the Material Affiliated Person or other entity maintaining the records shall file with the Commission a written undertaking, in a form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the retail foreign exchange dealer were maintaining the records pursuant to this section and that the entity maintaining the records will permit examination of such records at any time, or from time to time during business hours, by representatives or designees of the Commission and promptly furnish the Commission representative or its designee true, correct, complete and current hard copy of all or any part of such records. The election to maintain records at the principal place of business of the Material Affiliated Person or at a records storage facility pursuant to the provisions of this paragraph shall not relieve the retail foreign exchange dealer required to maintain and preserve such records from any of its responsibilities under this section or § 5.11 of this part.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a retail foreign exchange dealer concerning a Material Affiliated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(g) *Implementation schedule.* Each retail foreign exchange dealer who is subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i) and (ii) of this section commencing 60 calendar days after registration becomes effective and the information required by paragraphs (a)(1)(iii) and (iv) of this section commencing 105 calendar days following the first fiscal year-end occurring after registration becomes effective.

§ 5.11 Risk assessment reporting requirements for retail foreign exchange dealers.

(a) *Reporting requirements with respect to information required to be maintained by section 5.10 of this part.* (1) Each retail foreign exchange dealer registered with the Commission pursuant to Section 2(c)(2)(B)(i)(II)(gg) of the Act shall file the following with the regional office of the Commission with which it files periodic financial reports within 60 calendar days after the effective date of such registration:

(i) A copy of the organizational chart maintained by the retail foreign exchange dealer pursuant to § 5.10(a)(l)(i) of this part. Where there is a material change in information provided, an updated organizational

chart shall be filed within sixty calendar days after the end of the fiscal quarter in which the change has occurred; and

(ii) Copies of the financial, operational, and risk management policies, procedures and systems maintained by the retail foreign exchange dealer pursuant to § 5.10(a)(l)(ii) of this part. If the retail foreign exchange dealer has no such written policies, procedures or systems, it must file a statement so indicating. Where there is a material change in information provided, such change shall be reported within sixty calendar days after the end of the fiscal quarter in which the change has occurred.

(2) Each retail foreign exchange dealer registered with the Commission pursuant to section 2(c)(2)(B)(i)(II)(gg) of the Act shall file the following with the regional office with which it files periodic financial reports within 105 calendar days after the end of each fiscal year or, if a filing is made pursuant to a written notice issued under paragraph (a)(2)(iii) of this section, within the time period specified in the written notice:

(i) Fiscal year-end consolidated and consolidating balance sheets for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated balance sheets shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated balance sheets shall include appropriate explanatory notes. The consolidating balance sheets may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process;

(ii) Fiscal year-end annual consolidated and consolidating income statements and consolidated cash flow statements for the highest level Material Affiliated Person within the retail foreign exchange dealer's organizational structure, which shall include the retail foreign exchange dealer and its other Material Affiliated Persons, prepared in accordance with generally accepted accounting principles, which consolidated statements shall be audited by an independent certified public accountant if an annual audit is performed in the ordinary course of business, but which otherwise may be unaudited, and which consolidated statements shall include appropriate explanatory notes. The consolidating statements may be those prepared by the retail foreign exchange dealer's highest level Material Affiliated Person as part of its internal financial reporting process; and

(iii) Upon receiving written notice from any representative of the Commission and within the time period specified in the written notice, such additional information which the Commission determines is necessary for a complete understanding of a particular affiliate's financial impact on the retail foreign exchange dealer's organizational structure.

(3) For the purposes of this section, the term Material Affiliated Person shall have the meaning used in § 5.10 of this part.

(4) The reports required to be filed pursuant to paragraphs (a)(1) and (2) of this section shall be considered filed when received by the regional office of the Commission with whom the retail foreign exchange dealer files financial reports pursuant to § 5.12 of this part.

(b) *Exemptions.* The Commission may exempt any retail foreign exchange dealer from any provision of this section if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(c) *Special provisions with respect to Material Affiliated Persons subject to the supervision of certain domestic regulators.* (1) In the case of a Material Affiliated Person that is required to maintain and preserve information pursuant to section 240.17h–1T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt, the retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to such Material Affiliated Person if the retail foreign exchange dealer maintains and makes available for inspection by the Commission in accordance with the provisions of this section copies of the records and reports maintained and filed on Form 17–H (or such other forms or reports as may be required) by the Material Affiliated Person with the Securities and Exchange Commission pursuant to §§ 240.17h–1T and 240.17h–2T of this title, or such other risk assessment regulations as the Securities and Exchange Commission may adopt;

(2) In the case of a Material Affiliated Person (including a foreign banking organization) that is subject to examination by, or the reporting requirements of, a Federal banking agency, the retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to such Material Affiliated Person if the retail foreign exchange dealer or such Material Affiliated Person maintains in accordance with § 5.10 of this part copies of all reports filed by the Material Affiliated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956.

(3) In the case of a retail foreign exchange dealer that has a Material Affiliated Person that is subject to the supervision of an insurance commissioner or other similar official or agency of a state, such retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to the Material Affiliated Person if:

(i) With respect to a Material Affiliated Person organized as a mutual insurance company or a non-public stock company, the retail foreign exchange dealer or such Material Affiliated Person maintains in accordance with § 5.14 of this part copies of the annual statements with schedules and exhibits prepared by the Material Affiliated Person on forms prescribed by the National Association of Insurance Commissioners or by a state insurance commissioner; and

(ii) With respect to a Material Affiliated Person organized as a public stock company, the retail foreign exchange dealer or such Material Affiliated Person maintains, in addition to the annual statements with schedules and exhibits required to be maintained pursuant to § 1.14 of this chapter, copies of the filings made by the Material Affiliated Person pursuant to sections 13 or 15 of the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

(4) No retail foreign exchange dealer shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Affiliated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Affiliated Person that is subject to examination by or the reporting

requirements of a Federal banking agency shall be deemed confidential for the purposes of section 8 of the Act.

(5) The furnishing of any information or documents by a retail foreign exchange dealer pursuant to this section shall not constitute an admission for any purpose that a Material Affiliated Person is otherwise subject to the Act.

(d) *Special provisions with respect to Material Affiliated Persons subject to the supervision of a Foreign Regulatory Authority.* A retail foreign exchange dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a)(2) of this section with respect to a Material Affiliated Person if such retail foreign exchange dealer furnishes, or causes such Material Affiliated Person to make available, in accordance with the provisions of this section, copies of any financial or risk exposure reports filed by such Material Affiliated Person with a foreign futures authority or other foreign regulatory authority, provided that:

(1) The retail foreign exchange dealer agrees to use its best efforts to obtain from the Material Affiliated Person and to cause the Material Affiliated Person to provide, directly or through its foreign futures authority or other foreign regulatory authority, any supplemental information the Commission may request and there is no statute or other bar in the foreign jurisdiction that would preclude the retail foreign exchange dealer, the Material Affiliated Person, the foreign futures authority or other foreign regulatory authority from providing such information to the Commission; or

(2) The foreign futures authority or other foreign regulatory authority with whom the Material Affiliated Person files such reports has entered into an information sharing agreement with the Commission which is in effect as of the retail foreign exchange dealer's fiscal year-end and which will allow the Commission to obtain the type of information required herein. The retail foreign exchange dealer shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term "Foreign Futures Authority" shall have the meaning set forth in section 1a(10) of the Act.

(e) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a retail foreign exchange dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 8 of the Act.

(f) *Implementation schedule.* Each retail foreign exchange dealer who is subject to the requirements of this section shall file the information required by paragraph (a)(1) of this section within 60 calendar days after registration is granted, and the information required by paragraph (a)(2) of this section within 105 calendar days after registration is granted.

§ 5.12 Financial reports of retail foreign exchange dealers.

(a)(1) Each person who files an application for registration as a retail foreign exchange dealer with the National Futures Association shall submit, concurrently with the filing of such application, either:

(i) A Form 1–FR–FCM certified by an independent public accountant as of a date not more than 45 days prior to the date on which such report is filed; or

(ii) A Form 1–FR–FCM as of a date not more than 17 business days prior to the date on which such report is filed and a Form 1–FR–FCM certified by an independent public accountant as of a date not more than one year prior to the date on which such report is filed.

(2) Each such person must include with such financial report a statement describing the source of his current assets and representing that his capital has been contributed for the purpose of operating his business and will continue to be used for such purpose.

(3) The provisions of paragraph (a)(1) of this section do not apply to any person succeeding to and continuing the business of another retail foreign exchange dealer.

(b)(1) Each person registered as a retail foreign exchange dealer must file a Form 1–FR–FCM as of the close of business each month. Each Form 1–FR must be filed no later than 17 business days after the date for which the report is made.

(2) In addition to the monthly financial reports required by paragraph (b)(1) of this section, each person registered as a retail foreign exchange dealer must file a Form 1–FR–FCM as of the close of its fiscal year, which must be certified by an independent public accountant and must be filed no later than 90 days after the close of the retail foreign exchange dealer's fiscal year.

(3) A Form 1–FR–FCM required to be certified by an independent public accountant which is filed by a retail foreign exchange dealer must be filed in paper form and may not be filed electronically with the Commission. A Form 1–FR–FCM required to be certified by an independent public accountant which is filed by an applicant for registration as a retail foreign exchange dealer with the National Futures Association must be filed electronically in accordance with electronic filing procedures established by the National Futures Association, however a paper copy of any such filing with the original manually signed certification must be maintained by the applicant for registration as a retail foreign exchange dealer in accordance with § 1.31.

(c) Each Form 1–FR–FCM required by the provisions of paragraphs (a)(1) and (b)(2) of this section to be certified by an independent public accountant must be certified in accordance with § 1.16 of this chapter, and must be accompanied by the accountant's report on material inadequacies in accordance with the provisions of § 1.16(c)(5) of this chapter. In all other respects, the independent public accountant shall act in accordance with the provisions of § 1.16 (except paragraph (f)) of this chapter: Provided, however, that the term "§ 5.7" shall be substituted for the term "§ 1.17," and the term "retail foreign exchange dealer" shall be substituted for the term "futures commission merchant."

(d) Upon receiving written notice from any representative of the Commission, National Futures Association, or any self-regulatory organization of which the firm is a member, a retail foreign exchange dealer or applicant for such registration, must, monthly or at such times as specified, furnish the Commission, National Futures Association, or self-regulatory organization a Form 1–FR–FCM or such other financial information requested in the written notice. Each such Form 1–FR–FCM or such other information must be furnished within the time period specified in the written notice, and in accordance with the provisions of paragraph (i) of this section.

(e)(1) Each Form 1–FR–FCM filed pursuant to this § 5.12 which is not required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) A statement of income (loss) for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iii) A statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iv) A statement of changes in liabilities subordinated to claims of general creditors for the period between

the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(v) A statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part as of the date for which the report is made; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements and schedules not misleading.

(2) Each Form 1–FR–FCM filed pursuant to this § 5.12 which is required to be certified by an independent public accountant must be completed in accordance with the instructions to the form and contain:

(i) A statement of financial condition as of the date for which the report is made;

(ii) Statements of income (loss), cash flows, changes in ownership equity, and changes in liabilities subordinated to claims of general creditors, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: Provided, That for an applicant filing pursuant to paragraph (a) of this section the period must be the year ending as of the date of the statement of financial condition;

(iii) A statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part as of the date for which the report is made;

(iv) Appropriate footnote disclosures;

(v) A reconciliation, including appropriate explanations, of the statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part, in the certified Form 1–FR–FCM with the applicant's or registrant's corresponding uncertified most recent Form 1–FR–FCM filing when material differences exist or, if no material differences exist, a statement so indicating; and

(vi) In addition to the information expressly required, such further material information as may be necessary to make the required statements not misleading.

(3) The statements required by paragraphs (e)(2)(i) and (ii) of this section may be presented in accordance with generally accepted accounting principles in the certified reports filed as of the close of the registrant's fiscal year pursuant to paragraph (b)(2) of this section or accompanying the application for registration pursuant to paragraph (a)(1) of this section, rather than in the format specifically prescribed by these regulations: Provided, the statement of financial condition is presented in a format as consistent as possible with the Form 1–FR–FCM and a reconciliation is provided reconciling such statement of financial condition to the statement of the computation of the minimum capital requirements pursuant to § 5.7 of this part. Such reconciliation must be certified by an independent public accountant in accordance with § 1.16 of this chapter.

(4) Attached to each Form 1–FR–FCM filed pursuant to this section must be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the Form 1–FR–FCM is true and correct. The individual making such oath or affirmation must be: If the registrant or applicant is a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, the chief executive officer or chief financial officer; and, if a limited liability company or limited liability partnership, the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority for the limited liability company or limited liability partnership.

(f) *Election of fiscal year.* (1) An applicant wishing to establish a fiscal year other than the calendar year may do so by notifying the National Futures Association of its election of such fiscal year, in writing, concurrently with the filing of the Form 1–FR–FCM pursuant to paragraph (a)(1) of this section, but in no event may such fiscal year end more than one year from the date of the Form 1–FR–FCM filed pursuant to paragraph (a)(1) of this section. An applicant that does not so notify the National Futures Association will be deemed to have elected the calendar year as its fiscal year.

(2)(i) A registrant must continue to use its elected fiscal year, calendar or otherwise, unless a change in such fiscal year has been approved pursuant to this paragraph (f)(2).

(ii) A registrant may file with its designated self-regulatory organization an application to change its fiscal year, a copy of which the registrant must file with the Commission. The application shall be approved or denied in writing by the registrant's designated self-regulatory organization. The registrant must file immediately with the Commission a copy of any notice it receives from its designated self-regulatory organization to approve or deny the registrant's application to change its fiscal year. A written notice of approval shall become effective upon the filing by the registrant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(g) In the event a retail foreign exchange dealer or applicant for registration as a retail foreign exchange dealer finds that it cannot file its Form 1–FR–FCM for any period within the time specified in paragraph (b)(1) or (2) of this section without substantial undue hardship, it may request approval for an extension of time by filing an application for an extension of time with, in the case of a registrant, its designated self-regulatory organization, or, in the case of an applicant, the National Futures Association. The registrant or applicant also must file a copy of its application for an extension of time with the Commission. The application shall be approved or denied in writing by the National Futures Association or designated self-regulatory organization, as applicable. The registrant or applicant must file immediately with the Commission a copy of any notice it receives approving or denying the request for extension of time. A written notice of approval shall become effective upon the filing by the registrant or applicant of a copy with the Commission, and a written notice of denial shall be effective as of the date of the notice.

(h) *Public availability of reports.* (1) Forms 1–FR–FCM filed pursuant to this section will be treated as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act and parts 145 and 147 of this chapter, except for the information described in paragraph (i)(2) of this section.

(2) The following information in Forms 1–FR–FCM will be publicly available:

(i) The amount of the applicant's or registrant's adjusted net capital; the amount of its minimum net capital requirement under § 5.7 of this chapter; the amount of its adjusted net capital in excess of its minimum net capital requirement; and the amount of the retail forex obligation owed to its retail forex customers; and

(ii) The Statement of Financial Condition and the opinion of the independent public accountant in the certified annual financial reports of retail foreign exchange dealers.

(3) All information that is exempt from mandatory public disclosure under paragraph (h)(1) of this section will, however, be available for official use by any official or employee of the United States or any State, by the National Futures Association or any other self-

regulatory organization of which the person filing such report is a member, and by any other person to whom the Commission believes disclosure of such information is in the public interest. Nothing in this paragraph (h) will limit the authority of any self-regulatory organization to request or receive any information relative to its members' financial condition.

(i)(1) In the case of an applicant, all filings or other notices provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the applicant's principal place of business is located and by the National Futures Association. In the case of a registrant, all filings or other notices provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located and by the registrant's designated self-regulatory organization. Any copy that under paragraph (f)(2) or (g) is required to be filed with the Commission shall be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located.

(2) All filings or other notices filed pursuant to this section which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the retail foreign exchange dealer or a designated self regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in paragraph (e)(4) of this section.

§ 5.13 Reporting to customers of retail foreign exchange dealers and futures commission merchants; monthly and confirmation statements.

(a) *Monthly statements.* Each retail foreign exchange dealer or futures commission merchant must promptly furnish in writing to each retail forex customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement which clearly shows:

(1) For each retail forex customer:

(i) The open retail forex transactions with prices at which acquired;

(ii) The net unrealized profits or losses in all open retail forex transactions marked to the market; and

(iii) Any money, securities or other property carried with the retail foreign exchange dealer or futures commission merchant; and

(iv) A detailed accounting of all financial charges and credits to such retail forex accounts during the monthly reporting period, including money, securities or property received from or disbursed to such customer and realized profits and losses; and

(2) For each retail forex customer engaging in forex option transactions:

(i) All forex options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(ii) The open forex option positions carried for such customer as of the end of the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(iii) All open forex option positions marked to the market and the amount each position is in the money, if any;

(iv) Any money, securities or other property carried with the retail foreign exchange dealer or futures commission merchant; and

(v) A detailed accounting of all financial charges and credits to such retail forex account(s) during the monthly reporting period, including money, securities and property received from or disbursed to such customer, premiums charged and received, and realized profits and losses.

(b) *Confirmation statement.* Each retail foreign exchange dealer or futures commission merchant must, not later than the next business day after any retail forex or forex option transaction, furnish:

(1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day.

(2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:

(i) The retail forex customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex option transaction;

(iii) The strike price;

(iv) The underlying retail forex transaction or underlying currency;

(v) The final exercise date of the forex option purchased or sold; and

(vi) The date the forex option transaction was executed.

(3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any forex option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the forex option involved, and, in the case of exercise, the details of the retail forex or physical currency position which resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.

(4) Notwithstanding the provisions of paragraphs (b)(1) through (3) of this section, a retail forex transaction or forex option transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.

(c) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer or forex option customer for whom such account is carried, each retail foreign exchange dealer or futures commission merchant shall promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.

(d) *Recordkeeping.* Each retail foreign exchange dealer or futures commission merchant shall retain, in accordance

with § 1.31 of this chapter, a copy of each monthly statement and confirmation required by this section.

(e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the retail foreign exchange dealer or futures commission merchant is providing the statement was introduced by an introducing broker and the names of the retail foreign exchange dealer or futures commission merchant and introducing broker.

(g) *Electronic transmission of statements.* (1) The statements required by this section may be furnished to a retail forex customer by means of electronic media if the retail forex customer so consents, *Provided, however,* that a retail foreign exchange dealer or futures commission merchant must, prior to the transmission of any statement by means of electronic media, disclose the electronic medium or source through which statements will be delivered, the duration, whether indefinite or not, of the period during which consent will be effective, any charges for such service, the information that will be delivered by such means, and that consent to electronic delivery may be revoked at any time, and provided, further, that a retail foreign exchange dealer or futures commission merchant must obtain the retail forex customer's signed consent acknowledging such disclosure prior to the transmission of any statement by means of electronic media.

(2) Any statement required to be furnished to a person other than a retail forex customer in accordance with paragraph (g) of this section may be furnished by electronic media.

(3) A retail foreign exchange dealer or futures commission merchant who furnishes statements to a retail forex customer by means of electronic media must retain a daily confirmation statement for such retail forex customer as of the end of the trading session, reflecting all transactions made during that session for the customer, in accordance with § 1.31 of this chapter.

(h) *Combination with other statements.* Any futures commission merchant required to deliver statements to retail forex customers in accordance with § 1.33 of this chapter may combine into one monthly statement or confirmation statement, as the case may be, the information required by this section and the information required by § 1.33, provided that retail forex account information is separately identified from any other trading or account activity of the retail forex customer.

§ 5.14 Records to be kept by retail foreign exchange dealers and futures commission merchants.

(a) No person shall be registered as a retail foreign exchange dealer under the Act unless, commencing on the date his application for such registration is filed, he prepares and keeps current ledgers or other similar records which show or summarize, with appropriate references to supporting documents, each transaction affecting his asset, liability, income, expense and capital accounts, and in which (except as otherwise permitted in writing by the Commission) all his asset, liability and capital accounts are classified into either the account classification subdivisions specified on Form 1–FR–FCM or categories that are in accord with generally accepted accounting principles as applicable. Each person so registered shall prepare and keep current such records.

(b) Each applicant or registrant must make and keep as a record in accordance with § 1.31 of this chapter formal computations of its adjusted net capital and of its minimum financial requirements pursuant to § 1.17 or § 5.7 of this chapter, or the requirements of the designated self-regulatory organization to which it is subject, as applicable, as of the close of business each month. Such computations must be completed and made available for inspection by any representative of the National Futures Association, in the case of an applicant, or of the Commission or designated self-regulatory organization, if any, in the case of a registrant, within 17 business days after the date for which the computations are made, commencing the first month end after the date the application for registration is filed.

§ 5.15 Unlawful representations.

It shall be unlawful for any person registered pursuant to the requirements of this part to represent or imply in any manner whatsoever that such person has been sponsored, recommended or approved, or that its abilities or qualifications have been reviewed or evaluated, by the Commission, the Federal government or any agency thereof.

§ 5.16 Prohibition of guarantees against loss.

(a) No retail foreign exchange dealer, futures commission merchant or introducing broker may in any way represent that it will, with respect to any retail foreign exchange transaction in any account carried by a retail foreign exchange dealer or futures commission merchant for or on behalf of any person:

(1) Guarantee such person against loss;

(2) Limit the loss of such person; or

(3) Not call for or attempt to collect security deposits, margin, or other deposits as established for retail forex customers.

(b) No person may in any way represent that a retail foreign exchange dealer, futures commission merchant or introducing broker will engage in any of the acts or practices described in paragraph (a) of this section.

(c) This section shall not be construed to prevent a retail foreign exchange dealer, futures commission merchant or introducing broker from assuming or sharing in the losses resulting from an error or mishandling of an order.

(d) This section shall not affect any guarantee entered into prior to [effective date of final rule], but this section shall apply to any extension, modification or renewal thereof entered into after such date.

§ 5.17 Authorization to trade.

No retail foreign exchange dealer, futures commission merchant, introducing broker or any of their associated persons may directly or indirectly effect a retail forex transaction for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account specifically authorized the retail foreign exchange dealer, futures commission merchant, introducing broker or any of their associated persons to effect the transaction. A transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies:

(a) The precise retail forex transaction to be effected;

(b) The exact amount of the foreign currency to be purchased or sold; and

(c) In the case of an option, the identity of the foreign currency or contract that underlies the option.

§ 5.18 Trading and operational standards.

(a) For purposes of this section:

(1) The term *retail forex counterparty* includes, as appropriate:

(i) A retail foreign exchange dealer as defined in § 5.1 of this part;

(ii) A futures commission merchant as defined in section 1a(20) of the Act; and

(iii) An affiliated person of a futures commission merchant as defined in § 5.1 of this part.

(2) The term *related person* when used in reference to a retail forex counterparty means any general partner, officer, director, owner of more than ten percent of the equity interest, associated person or employee of the retail forex

counterparty, and any relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons.

(b) Prior to engaging in a retail forex transaction, each retail forex counterparty shall, at a minimum, establish and enforce internal rules, procedures and controls to:

(1) Ensure, to the extent possible, that each order received from a retail forex customer which order is executable at or near the price that the retail forex counterparty has quoted to the customer is entered for execution before any order in any retail forex transaction for any proprietary account, any other account in which a related person of the retail forex counterparty has an interest, or any account for which such a related person may originate orders without the prior specific consent of the account owner (if such related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account), an account in which such a related person has an interest, or an account in which such a related person may originate orders without the prior specific consent of the account owner; and

(2) Prevent related persons of forex counterparties from placing orders, directly or indirectly, with another person in a manner designed to circumvent the provisions of paragraph (b)(1) of this section;

(3) Fairly and objectively establish settlement prices for retail forex transactions; and

(4) Record and maintain essential information regarding customer orders and account activity, and to provide such information to customers upon request. Such information shall include:

(i) Transaction records for the customer's account, including:

(A) The date and time each order is received by the retail forex counterparty;

(B) The price at which each order is placed, or, in the case of an option, the premium paid;

(C) If the transaction was entered into by means of a trading platform, the price quoted on the trading platform when the order was placed, or, in the case of an option, the premium quoted;

(D) The customer account identification information;

(E) The currency pair;

(F) The size of the transaction;

(G) Whether the order was a buy or sell order;

(H) The type of order, if the order was not a market order;

(I) If a trading platform is used, the date and time the order is transmitted to the trading platform;

(J) If a trading platform is used, the date and time the order is executed;

(K) The size and price at which the order is executed, or in the case of an option, the amount of the premium paid for each option purchased, or the amount credited for each option sold; and

(L) For options, whether the option is a put or call, the strike price, and expiration date.

(ii) Account records that contain the following information:

(A) The funds in the account, net of any commissions and fees;

(B) The net profits and losses on open trades; and

(C) The funds in the account plus or minus the net profits and losses on open trades. (In the case of open option positions, the account balance should be adjusted for the net option value);

(iii) If a trading platform is used, daily logs showing each price change on the platform, the time of the change to the nearest second, and the trading volume at that time and price; and

(iv) Any method or algorithm used to determine the bid or asked price for any retail forex transaction or the prices at which customer orders are executed, including, but not limited to, any markups, fees, commissions or other items which affect the profitability or risk of loss of a retail forex customer's transaction.

(c) No retail forex counterparty shall disclose that an order of another person is being held by the retail forex counterparty, unless such disclosure is necessary to the effective execution of such order or is made at the request of an authorized representative of the Commission, or a futures association registered with the Commission pursuant to section 17 of the Act.

(d) No retail forex counterparty shall knowingly handle the account of any related person of another retail forex counterparty unless it:

(1) Receives written authorization from a person designated by such other retail forex counterparty with responsibility for the surveillance over such account pursuant to paragraph (b)(2) of this section;

(2) Prepares immediately upon receipt of an order for such account a written record of such order, including the account identification and order number, and records thereon to the nearest minute, by time-stamp or other timing device, the date and time the order is received; and

(3) Transmits on a regular basis to such other retail forex counterparty copies of all statements for such account and of all written records prepared upon the receipt of orders for such account pursuant to paragraph (b)(2) of this section.

(e) No related person of a retail forex counterparty shall have an account, directly or indirectly, with another retail forex counterparty unless:

(1) It receives written authorization to maintain such an account from a person designated by the retail forex counterparty of which it is a related person with responsibility for the surveillance over such account pursuant to paragraph (b)(2) of this section; and

(2) Copies of all statements for such account and of all written records prepared by such other retail forex counterparty upon receipt of orders for such account pursuant to paragraph (d)(2) of this section are transmitted on a regular basis to the retail forex counterparty of which it is a related person.

(f) No retail forex counterparty shall:

(1) Enter into a retail forex transaction, to be executed pursuant to a market or limit order at a price that is not at or near the price at which other retail forex customers, during that same time period, have executed retail forex transactions with the retail forex counterparty; *Provided, however,* that this paragraph (f)(1) shall not prohibit such practice if done in accordance with the rules of a registered futures association, and of which such retail foreign exchange dealer, futures commission merchant or affiliated person of a futures commission merchant is a member;

(2) Adjust or alter prices for a retail forex transaction after the transaction has been confirmed to the retail forex customer; *Provided, however*, that this paragraph (f)(2) shall not prohibit such practice if in accordance with the rules of a registered futures association, and of which such retail foreign exchange dealer, futures commission merchant or affiliated person of a futures commission merchant is a member;

(3)(i) Provide a retail forex customer a new bid price for a retail forex transaction that is higher than its previous bid without providing a new asked price that is also higher than its previous asked price by a similar amount;

(ii) Provide a retail forex customer a new bid price for a retail forex transaction that is lower than its previous bid without providing a new asked price that is also lower than its previous asked price by a similar amount; or

(4) Establish a new position for a retail forex customer (except one that

offsets an existing position for that retail forex customer) where the retail forex counterparty holds outstanding orders of other retail forex customers for the same currency pair at a comparable price.

(g)(1) Each retail forex counterparty and each CPO, CTA and IB subject to this Part 5 shall maintain a record of all communications received by such person concerning facts giving rise to possible violations of the Act, rules, regulations or orders thereunder, related to their retail forex business. The record shall contain the name of the complainant, if provided, the date of the communication, the agreement, contract or transaction, the substance of the communication, and the name of the person who received the communication.

(2) Each retail forex counterparty and each CPO, CTA and IB subject to this Part 5 shall provide to the Division of Enforcement of the Commission, electronically, a copy of the record of each communication received pursuant to paragraph (g)(1) of this section. Such copy shall be provided to the Division of Enforcement of the Commission no later than 30 calendar days after the communication is received: *Provided, however,* that in the case of a communication concerning facts giving rise to possible fraud under the Act or Commission regulations, such copy shall be provided to the Division of Enforcement of the Commission within three business days after the communication is received.

(h) An introducing broker as defined in § 5.11(a)(1) of this part, or an applicant for registration as an introducing broker as defined in § 5.1(f)(1) of this part, or any person succeeding to and continuing the business of another introducing broker as defined in § 5.1(f)(1) of this part, must enter into a guarantee agreement with a retail foreign exchange dealer or futures commission merchant.

(i) Each retail forex counterparty shall prepare and maintain on a quarterly basis a calculation of the percentage of non discretionary retail forex accounts open for any period of time during the quarter that earned a profit, and the percentage of such accounts that experienced a loss. The calculation of profit or loss for each retail forex account must be net of fees, commissions, any other expenses, trading losses, customer funds deposited, and customer funds withdrawn. Retail forex counterparties shall maintain such calculations along with all data supporting such calculations for five years in accordance with § 1.31.

(j) Each retail forex counterparty shall designate one or more principals to serve as a chief compliance officer(s). The chief compliance officer(s) shall certify to the Commission and a registered national futures association annually that the retail forex counterparty has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with the Act, rules, regulations and orders thereunder. The certification shall include a statement that the counterparty has in place compliance processes, and that the chief compliance officer(s) has apprised the chief executive officer of the compliance efforts to date and identify and address significant compliance problems and plans to address those problems.

§ 5.19 Pending legal proceedings.

(a) Every retail foreign exchange dealer or futures commission merchant and each CPO, CTA or IB subject to this Part 5 shall submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed, the notice of appeal and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the retail foreign exchange dealer, futures commission merchant, CPO, CTA or IB is a party or to which its property or assets is subject with respect to retail forex transactions.

(b) Every retail foreign exchange dealer or futures commission merchant and each CPO, CTA or IB subject to this Part 5 shall submit to the Commission copies of any dispositive or partially dispositive decision concerning which a notice of appeal has been filed, the notice of appeal, and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any person who is a principal of the retail foreign exchange dealer, futures commission merchant, CPO, CTA or IB (as the term "principal" is defined in § 3.1(a) of this chapter) arising from conduct in such person's capacity as a principal of the retail foreign exchange dealer, futures commission merchant, CPO, CTA or IB and alleging violations, with regard to retail forex transactions, of:

(1) The Act or any rule, regulation, or order thereunder; or

(2) Provisions of state law relating to a duty or obligation owed by such a principal.

(c) All documents required by this section to be submitted to the Commission shall be mailed via first-class or submitted by other more expeditious means to the Commission's headquarters office in Washington, DC, Attention: Director, Division of Enforcement. All documents required by this section to be submitted to the Commission as to matters pending on [effective date of final rule] shall be mailed to the Commission within 45 days of that effective date. Thereafter, all decisions and notices of appeal required to be submitted by retail foreign exchange dealers, futures commission merchants, CPOs, CTAs or IBs shall be mailed within 10 days of the filing or receipt by the retail foreign exchange dealer or futures commission merchant of the relevant notice of appeal. For purposes of paragraph (a) and (b) of this section, a "material legal proceeding" includes but is not limited to actions involving alleged violations of the Commodity Exchange Act or the Commission's regulations. However, a legal proceeding is not "material" for the purposes of this rule if the proceeding is not in a federal or state court or if the Commission is a party.

§ 5.20 Special calls for account and transaction information.

(a) *Preparation and transmission of information upon special call.* All information required upon special call shall be prepared in such form and manner and in accordance with such instructions, and shall be transmitted at such time and to such office of the Commission, as may be specified in the call.

(b) *Special calls for information on controlled accounts from retail foreign exchange dealers, futures commission merchants and introducing brokers.* Upon call by the Commission, each retail foreign exchange dealer, futures commission merchant and introducing broker shall file with the Commission the names and addresses of all persons who, by power of attorney or otherwise, exercise trading control over any customer's account in retail forex transactions.

(c) *Special calls for information on open transactions in accounts carried or introduced by retail foreign exchange dealers, futures commission merchants, and introducing brokers.* Upon special call by the Commission for information relating to retail forex transactions held or introduced on the dates specified in the call, each retail foreign exchange dealer, futures commission merchant, or introducing broker shall furnish to the Commission the following information concerning accounts of traders owning or controlling such retail forex transaction positions, as may be specified in the call:

(1) The name, address, and telephone number of the person for whom each account is carried;

(2) The principal business or occupation of the person for whom each account is introduced or carried, as specified in the call;

(3) The name, address and principal business or occupation of any person who controls the trading of each account;

(4) The name and address of any person having a financial interest of ten percent or more in each account;

(5) The number of open retail forex transaction positions introduced or carried in each account, as specified in the call; and

(6) The total number of retail forex transactions against which delivery has been made.

(d) *Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight and the Director of the Division of Market Oversight.* The Commission hereby delegates, until the Commission orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and the Director of the Division of Market Oversight, or to the respective Director's designees, the authority set forth in this section to make special calls for information on controlled accounts from retail foreign exchange dealers, futures commission merchants and from introducing brokers, and to make special calls for information on open contracts in accounts carried or introduced by futures commission merchants, introducing brokers, and foreign brokers. Either Director may submit to the Commission for its consideration any matter that has been delegated pursuant to this section. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section to the Directors.

§ 5.21 Supervision.

Each Commission registrant subject to this Part 5, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all retail forex accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

§ 5.22 Registered futures association membership.

(a) Each person registered as a retail foreign exchange dealer must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such retail foreign exchange dealer.

(b) Each person required to register as:

(1) An introducing broker, because the person solicits or accepts orders for retail forex transactions;

(2) A commodity pool operator because the person operates, or solicits funds, securities, or property for, a pooled investment vehicle that engages in retail forex transactions; or

(3) A commodity trading advisor because the person exercises discretionary trading authority, or obtains written authorization to exercise discretionary trading authority over, an account in connection with retail forex transactions, must become and remain a member of at least one futures association that is registered under section 17 of the Act and that provides for the membership therein of such person.

§ 5.23 Notice of bulk transfers and bulk liquidations.

(a) *Notice and Disclosure to Retail Forex Customers of a Bulk Transfer.* (1) A retail foreign exchange dealer, futures commission merchant or introducing broker must obtain the written prior and specific consent of its retail forex customer to the assignment of any position or transfer of any account of the retail forex customer to another retail foreign exchange dealer, futures commission merchant or introducing broker, unless made at the retail forex customer's request.

(2) Absent a request of the retail forex customer or the consent described in paragraph (a)(1) of this section, assignments of positions and transfers of accounts of retail forex customers may be permitted under rules of the retail forex dealer's, futures commission merchant's, or introducing broker's designated self-regulatory organization that establish notice and other requirements with respect to the assignment of positions and transfers of accounts of retail forex customers. If such rules permit implied consent as a result of the failure of the retail forex customer to object after having received notice of the proposed assignment or transfer, such rules must provide that the notice must include a statement that the retail forex customer is not required to accept the proposed assignment or transfer and may direct the transferor firm to liquidate the positions of the retail forex customer or transfer the account to a firm of the retail forex customer's selection.

(3) For assignments and transfers made under this section, other than at the retail forex customer's request, the transferee retail foreign exchange dealer, futures commission merchant or introducing broker must provide to the retail forex customer the risk disclosure statements and forms of acknowledgment required by Part 5 of this chapter and receive the required signed acknowledgments within sixty days of such assignments or transfers. This requirement shall not apply:

(i) If the transferee retail foreign exchange dealer, futures commission merchant or introducing broker has clear written evidence that the retail forex customer has received and acknowledged receipt of the required disclosure statements; or

(ii) If the transfer of accounts is made from one introducing broker to another introducing broker guaranteed by the same retail foreign exchange dealer or futures commission merchant pursuant to a guarantee agreement in accordance with the requirements of § 1.10(j) of this chapter and such retail foreign exchange dealer or futures commission merchant maintains the relevant acknowledgments required by Part 5 of this chapter.

(b) *Notice to the Commission.* Each retail foreign exchange dealer, futures commission merchant or introducing broker shall file with the Commission prior notice of any transfer of accounts of any retail forex customer that is not initiated at the request of the customer, where the transfer involves 50 percent or more of the transferor's total number of retail forex customer accounts.

(c) *Contents of Notice to the Commission.* The notice required by paragraph (b) of this section shall include:

(1) The name, principal business address and telephone number of the transferor futures retail foreign exchange dealer, futures commission merchant or introducing broker;

(2) The name, principal business address and telephone number of each transferee retail foreign exchange dealer, futures commission merchant or introducing broker;

(3) The designated self-regulatory organization for the transferor and transferee firms;

(4) A brief statement as to the reasons for the transfer;

(5) A copy of any notices to customers regarding the transfers; and

(6) A statement of the number of accounts to be transferred.

(d) *Notice of the Bulk Liquidation of Retail Forex Transactions.* A retail foreign exchange dealer or futures commission merchant may not initiate the bulk liquidation of properly margined retail forex transactions unless such liquidation complies with the rules and procedures of the retail forex dealer's or futures commission merchant's designated self-regulatory organization and the retail forex dealer or futures commission merchant provides the Commission with prior written notice of the liquidation.

(e) *Contents of Notice of Bulk Liquidation.* The notice required by paragraph (d) of this section shall include:

(1) The name, principal business address and telephone number of the initiating retail foreign exchange dealer or futures commission merchant;

(2) A brief statement of the reasons for the liquidation;

(3) A copy of any notices to customers regarding the liquidation; and

(4) A statement of the number of accounts to be liquidated.

(f) *Filing of Notices.* The notice required by paragraph (b) and (d) of this section shall be filed five business days prior to the transfer or liquidation of the retail forex transaction with the Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; the National Futures Association Attn: Vice President-Compliance; and the designated self-regulatory organization for the transferor firm.

(g) *No effect on other obligations.* The requirements of this section shall not affect the obligations of a retail foreign exchange dealer, futures commission merchant or introducing broker under the rules of a self-regulatory organization or applicable customer account agreement with respect to assignments of positions or transfers of accounts or liquidation of positions.

(h) *Corrective notice.* If a proposed transfer is not completed in accordance with the notice required to be filed by paragraph (b) of this section, a corrective notice shall be filed within five business days of the date such proposed transfer was to occur explaining why the proposed transfer was not completed.

§ 5.24 Applicability of other parts of this chapter.

Insofar as it is consistent with the requirements of this part, all other provisions of this chapter that apply to a person shall apply to such person as though such provisions were expressly set forth in this part.

§ 5.25 Applicability of the Act.

Except as otherwise specified in this part and unless the context otherwise requires, the provisions of Sections 4b, 4c(b), 4f, 4g, 4k, 4m, 4n, 4o, 6(c)–(e), 6b, 6c, 8(a)–(e), 8a and 12(f) of the Act shall apply to retail forex transactions that are subject to the requirements of this part as though such provisions were set forth herein and included specific references to retail forex transactions and the persons defined in § 5.1 of this part.

PART 10—RULES OF PRACTICE

37. The authority citation for part 10 continues to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 2a(12).

38. Section 10.1 is amended by revising paragraph (a) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning, restricting or modifying of registration as a futures commission merchant, retail foreign exchange dealer, introducing broker, or associated person, floor broker, floor trader, commodity pool operator, commodity trading advisor or leverage transaction merchant pursuant to sections 6(c), 8a(2), 8a(3), 8a(4) and 8a(11) of the Act, 7 U.S.C. 9 and 15, 12a(2), 12a(3), 12a(4) and 12(a)(11), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6(a) and 6(b) of the Act, 7 U.S.C. 8;

* * * * *

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEEDINGS OF THE COMMISSION

39. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

40. Section 140.94 is amended by adding to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) The Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Clearing and Intermediary Oversight and to such members of the Commission's staff acting under his direction as he may designate from time to time:

(1) All functions reserved to the Commission in § 5.7 of this chapter;

(2) All functions reserved to the Commission in § 5.10 of this chapter;

(3) All functions reserved to the Commission in § 5.11 of this chapter;

(4) All functions reserved to the Commission in § 5.12 of this chapter, except for those relating to nonpublic treatment of reports set forth in § 5.12(i) of this chapter; and

(5) All functions reserved to the Commission in § 5.14 of this chapter.

(b) The Director of the Division of Clearing and Intermediary Oversight may submit any matter which has been delegated to him under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Clearing and Intermediary Oversight under paragraph (a) of this section.

PART 145—COMMISSION RECORDS AND INFORMATION

41. The authority citation for part 145 continues to read as follows:

Authority: Pub. L. 99–570, 100 Stat. 3207; Pub. L. 89–554, 80 Stat. 383; Pub. L. 90–23, 81 Stat. 54; Pub. L. 98–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); unless otherwise noted.

42. Section 145.5 is amended by revising paragraphs (d)(1)(viii) and (h) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *

(1) * * *

(viii) The following reports and statements that are also set forth in paragraph (h) of this section, except as specified in 17 CFR 1.10(g)(2), 17 CFR 31.13(m), or 17 CFR 5.12(h): Forms 1–FR required to be filed pursuant to 17 CFR 1.10 or 17 CFR 5.12; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(h) Contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (d)(1)(viii) of this section, except as specified in 17

CFR 1.10(g)(2), 17 CFR 5.12(h) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10 or 17 CFR 5.12; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

* * * * *

PART 147—OPEN COMMISSION MEETINGS

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

Authority: Sec. 3(a), Pub. L. 94–409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93–463, 88 Stat. 1391 (7 U.S.C. 4a(j) (Supp. V, 1975)), unless otherwise noted.

44. Section 147.3 is amended by revising paragraphs (b)(4)(i)(H) and (b)(8) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(H) The following reports and statements that are also set forth in paragraph (b)(8) of this section, except as specified in 17 CFR 1.10(g)(2), 17 CFR 5.12, or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10, 17 CFR 5.12(h)(2), or 17 CFR 31.13(m); FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (b)(4)(i)(H) of this section, except as specified in 17 CFR 1.10(g)(2), 17 CFR 5.12, or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10, 17 CFR 5.12(h)(2), or 17 CFR 31.12(m); FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6);

* * * * *

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION

45. The authority citation for part 160 continues to read as follows:

Authority: 7 U.S.C. 7b–2 and 12a(5); 15 U.S.C. 6801, *et seq.*

46. Section 160.1 is amended by revising paragraph (b) to read as follows:

§ 160.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to all futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators and introducing brokers that are subject to the jurisdiction of the Commission, regardless whether they are required to register with the Commission. These entities are hereinafter referred to in this part as "you." This part does not apply to foreign (non-resident) futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators and introducing brokers that are not registered with the Commission. Nothing in this part modifies, limits or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d–1320d–8.

47. Section 160.3 is amended by:

a. Revising paragraph (a) introductory text and paragraph (a)(2);

b. Redesignating paragraphs (k)(2)(i)(B) through (F) as paragraphs (k)(2)(i)(C) through (G) and republishing them, and adding new paragraph (k)(2)(i)(B);

c. Revising paragraphs (n)(1)(i) and (n)(2)(i);

d. Revising paragraph (o)(1)(i);

e. Revising paragraph (u)(2)(i)(A);

f. Redesignating paragraphs (w)(2) through (4) as paragraphs (w)(3) through (5) and adding new paragraph (w)(2); and

g. Adding new paragraph (x) to read as follows:

§ 160.3 Definitions.

* * * * *

(a) *Affiliate* of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker means any company that controls, is controlled by, or is under common control with a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker that is subject to the jurisdiction of the Commission. In addition, a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker subject to the jurisdiction of the Commission will be deemed an affiliate of a company for purposes of this part if:

* * * * *

(2) Rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the GLB Act treat the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker as an affiliate of that company.

* * * * *

(k) * * *

(2) * * *

(i) * * *

(B) You are a retail foreign exchange dealer with whom a consumer has opened an account, or that effects or engages in retail forex transactions with or for a consumer, even if you do not hold any assets of the consumer.

(C) You are an introducing broker that solicits or accepts specific orders for trades;

(D) You are a commodity trading advisor with whom a consumer has a contract or subscription, either written or oral, regardless of whether the advice is standardized, or is based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of the particular consumer;

(E) You are a commodity pool operator, and you accept or receive from the consumer, funds, securities, or property for the purpose of purchasing an interest in a commodity pool;

(F) You hold securities or other assets as collateral for a loan made to the consumer, even if you did not make the loan or do not effect any transactions on behalf of the consumer; or

(G) You regularly effect or engage in commodity interest transactions with or for a consumer even if you do not hold any assets of the consumer.

* * * * *

(n)(1) * * *

(i) Any futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker that is registered with the Commission as such or is otherwise subject to the Commission's jurisdiction; and

* * * * *

(2) * * *

(i) Any person or entity, other than a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator or introducing broker that, with respect to any financial activity, is subject to the jurisdiction of the Commission under the Act.

* * * * *

(o)(1) * * *

(i) Any product or service that a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, or introducing broker could offer that is subject to the Commission's jurisdiction; and

* * * * *

(u) * * *

(2) * * *

(i) * * *

(A) Information a consumer provides to you on an application to open a commodity interest trading account, to invest in a commodity pool, or to obtain another financial product or service;

* * * * *

(w) * * *

(2) Any retail foreign exchange dealer;

* * * * *

(x) *Retail foreign exchange dealer* has the same meaning as in § 5.3(i)(1) of this chapter.

48. Section 160.4 is amended by:

a. Revising paragraph (c)(2)(ii); and

b. Revising paragraph (e)(1)(iv) to read as follows:

§ 160.4 Initial privacy notice to consumers required.

* * * * *

(c) * * *

(2) * * *

(ii) Opens a retail forex account, or opens a commodity interest account through an introducing broker or with a futures commission merchant that clears transactions for its customers through you on a fully-disclosed basis;

* * * * *

(e) * * *

(1) * * *

(iv) You have established a customer relationship with a customer in a bulk transfer in accordance with § 1.65, if you are a transferee futures commission merchant, retail foreign exchange dealer or introducing broker.

* * * * *

49. Section 160.30 is amended by revising the introductory text to read as follows:

§ 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator and introducing broker subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information. These policies and procedures must be reasonably designed to:

* * * * *

PART 166—CUSTOMER PROTECTION RULES

50. The authority citation for part 166 remains as follows:

Authority: 7 U.S.C. 1a, 2, 6b, 6c, 6d, 6g, 6h, 6k, 6l, 6o, 7, 12a and 23, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

51. Section 166.2 is revised as follows:

§ 166.2 Authorization to trade.

No futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account:

(a) With respect to any commodity interest as defined in § 1.3(yy)(1) through (3) of this chapter, specifically authorized the futures commission merchant, retail foreign exchange dealer, introducing broker or any of their associated persons to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies—

(1) The precise commodity interest to be purchased or sold and

(2) The exact amount of the commodity interest to be purchased or sold); or

(b) With respect to any commodity interest as defined in § 1.3(yy)(1) or (2) of this chapter, authorized in writing the futures commission merchant, introducing broker or any of their associated persons to effect transactions in commodity interests for the account without the customer's specific authorization; Provided, however, That if any such futures commission merchant, introducing broker or any of their associated persons is also authorized to effect transactions in foreign futures or foreign options without the customer's specific authorization, such authorization must be expressly documented.

52. Section 166.5 is amended by:

a. Removing paragraph (a)(1)(iv), redesignating paragraphs (a)(1)(i) through (a)(1)(iii) as paragraphs (a)(1)(i)(A) through (a)(1)(i)(C), and adding new paragraph (a)(1)(ii);

b. Revising paragraphs (a)(2) and (a)(3);

c. Revising paragraphs (c)(5)(i)(A) and (c)(5)(i)(C) to read as follows:

§ 166.5 Dispute settlement procedures.

(a) * * *

(ii) Arises out of any retail forex transaction (as defined in § 5.1(m) of this chapter).

(2) The term customer as used in this section includes an option customer (as defined in § 1.3(jj) of this chapter), a retail forex customer (as defined in § 5.1(k) of this chapter) and any person for or on behalf of whom a member of a designated contract market, or a participant transacting on or through such designated contract market, effects a transaction on such contract market, except another member of or participant in such designated contract market; *Provided, however,* a person who is an "eligible contract participant" as defined in section 1a(12) of the Act shall not be deemed to be a customer within the meaning of this section.

(3) The term *Commission registrant* as used in this section means a person registered under the Act as a futures commission merchant, retail foreign exchange dealer, introducing broker, floor broker, commodity pool operator, commodity trading advisor, or associated person.

* * * * *

(c) * * *

(5) * * *

(i) * * *

(A) The designated contract market, if applicable and if available, upon which the transaction giving rise to the dispute was executed or could have been executed;

* * * * *

(C) At least one other organization that will provide the customer with the opportunity to select the location of the arbitration proceeding from among

several major cities in diverse geographic regions and that will provide the customer with the choice of a panel or other decision-maker composed of at least one or more persons, of which at least a majority are not members or associated with a member of the designated contract market, if applicable, or employee thereof, and that are not otherwise associated with the designated contract market (mixed panel), if applicable: Provided, however, that the list of qualified organizations provided by a Commission registrant that is a floor broker need not include a registered futures association unless a registered futures association has been authorized to act as a decision-maker in such matters.

* * * * *

Issued in Washington, DC, on January 7, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

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H.R. 4314/P.L. 111–123
To permit continued financing of Government operations. (Dec. 28, 2009; 123 Stat. 3483)

H.R. 4284/P.L. 111–124
To extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes. (Dec. 28, 2009; 123 Stat. 3484)

H.R. 3819/P.L. 111–125
To extend the commercial space transportation liability regime. (Dec. 28, 2009; 123 Stat. 3486)

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