
# Federal Register

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# Federal Register

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

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

WHEN: Tuesday, July 14, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Part 320

**[Docket No. FSIS–2009–0015]**

**RIN 0583–AA69**

### Recordkeeping Regulations; Correcting Amendment

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Correcting amendment.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to correct an inadvertent error in the recordkeeping provisions.

**DATES:** This amendment is effective July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 720–0399.

**SUPPLEMENTARY INFORMATION:** On November 30, 1990, FSIS published a final rule on net weight labeling of meat and poultry products (55 FR 49826). The rule redesignated § 317.20 as § 317.24 (55 FR 49833). However, in § 320.1(b)(5), the rule did not change the reference to § 317.24. This notice corrects the error and amends § 320.1(b)(5) to refer to § 317.24.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2009_Interim_&_Final_Rules_Index/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*.

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#### List of Subjects in 9 CFR Part 320

Meat inspection, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 9 CFR part 320 is amended as follows:

### PART 320—RECORDS, REGISTRATION, AND REPORTS

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

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.7, 2.18, 2.53.

■ 2. In § 320.1, revise paragraph (b)(5) to read as follows:

**§ 320.1 Records required to be kept.**

* * * * *

(b) * * *

(5) Guaranties provided by suppliers of packaging materials under § 317.24.

* * * * *

Done at Washington, DC, on June 29, 2009.

**Alfred V. Almanza,**

*Administrator.*

[FR Doc. E9–15815 Filed 7–2–09; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[Docket No. EERE–2007–BT–TP–0013]**

**RIN 1904–AB72**

### Energy Conservation Program: Test Procedures for General Service Fluorescent Lamps, Incandescent Reflector Lamps, and General Service Incandescent Lamps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending its test procedures for certain fluorescent and incandescent lamps, which manufacturers are required to use to certify compliance with energy conservation standards mandated under the Energy Policy and Conservation Act (EPCA). Specifically, these amendments update citations and references to the industry standards currently referenced in DOE's test procedures, and make several technical modifications. The amendments also provide test methods for some general service fluorescent lamps, based on new product designs, which are subject to existing energy conservation standards but do not currently have test procedures in place. Test procedures for additional general service fluorescent lamps to which the energy conservation standards rulemaking extends coverage will be adopted as part of the upcoming energy conservation standards final rule. Finally, because the Energy Independence and Security Act of 2007 (EISA 2007) adopted energy conservation standards for certain general service incandescent lamps, DOE is amending its test procedures for incandescent lamps to provide appropriate methods to test these lamps.

**DATES:** This rule is effective August 5, 2009. Incorporation by reference of certain publications in this final rule is approved by the Director of the Office of the Federal Register as of August 5, 2009.

**ADDRESSES:** The public may review copies of all materials related to this rulemaking at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–1851. E-mail: *Linda.Graves@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule incorporates by reference into part 430 the following industry standards:

1. ANSI_IEC C78.81–2005, Revision of ANSI C78.81–2003, "American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics," August 11, 2005;

2. ANSI C78.375–1997, Revision of ANSI C78.375–1991, "American National Standard for Fluorescent Lamps—Guide for Electrical Measurements," September 25, 1997;

3. ANSI_IEC C78.901–2005, Revision of ANSI C78.901–2001, "American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics," March 23, 2005;

4. ANSI C82.3–2002, Revision of ANSI C82.3–1983 (R 1995), "American National Standard for Lamp Ballasts—Reference Ballasts for Fluorescent Lamps," September 4, 2002;

5. CIE 15–2004, "Technical Report: Colorimetry, 3rd edition," 2004; ISBN 978 3 901906 33 6;

6. IESNA LM–9–99, "IESNA Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps," 1999; and

7. IESNA LM–45–00, "IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps," May 8, 2000.

You can purchase copies of ANSI Standards from the American National Standards Institute, 25 West 43rd Street, New York, New York 10036, (212) 642–4900, or *http://www.ansi.org.*

You can purchase CIE reports from the International Commission on Illumination, CIE Bureau Central, Kegelgasse 27, A–1030, Vienna, Austria, +43 1–714 31 87 0, or *http://www.cie.co.at.*

You can purchase copies of IESNA Standards from the Illuminating Engineering Society of North America, 120 Wall Street, Floor 17, New York, NY 10005–4001, (212) 248–5000, or *http://www.iesna.org.*

You can also view copies of these standards at the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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## I. Introduction

### *A. Authority and Background*

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*; EPCA) sets forth a variety of provisions designed to improve energy efficiency. Part A [1] of Title III (42 U.S.C. 6291–6309) establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." The consumer and commercial products subject to this program (hereafter "covered products") include general service fluorescent lamps (GSFL), incandescent reflector lamps (IRL), and general service incandescent lamps (GSIL). Under EPCA, the overall program consists essentially of testing, labeling, and Federal energy conservation standards. The testing requirements consist of test procedures, prescribed pursuant to EPCA, that manufacturers of covered products must use as the basis for establishing and certifying to DOE that their products comply with applicable energy conservation standards adopted under EPCA.

Section 323 of EPCA (42 U.S.C. 6293) sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. It states, for example, that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3)) In addition, in any rulemaking to amend a test procedure, DOE must determine "to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure." (42 U.S.C. 6293(e)(1)) If the amended test procedure alters the measured efficiency, the Secretary must determine the average efficiency level under the new test procedure of products that minimally complied with the applicable energy conservation standard prior to the test procedure amendment, and must set the standard at that level. (42 U.S.C. 6293(e)(2)) In addition, any existing model of a product that complied with the previously applicable standard would be deemed to comply

[1] This part was originally titled Part B; however, it was redesignated Part A in the United States Code for editorial reasons.

with the new standard. (42 U.S.C. 6293(e)(3))

EPCA requires DOE to prescribe test procedures for fluorescent lamps and IRL for which energy conservation standards are applicable, considering the applicable standards of the Illuminating Engineering Society of North America (IESNA) or American National Standards Institute (ANSI). (42 U.S.C. 6293(b)(6)) DOE's existing test procedures for lamps (general service fluorescent lamps, incandescent reflector lamps, general service incandescent lamps, and medium base compact fluorescent lamps), which it adopted under these provisions, appear at Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix R, "Uniform Test Method for Measuring Average Lamp Efficiency (LE) and Color Rendering Index (CRI) of Electric Lamps" (Appendix R). Prior to today's final rule, several ANSI, International Commission on Illumination (CIE), and IESNA industry standards were incorporated by reference in the lamps test procedure.

DOE has also adopted test procedures for medium base compact fluorescent lamps (CFL) to implement certain amendments to EPCA contained in the Energy Policy Act of 2005 (Pub. L. 109–58) (EPACT 2005). Specifically, EPACT 2005 amended EPCA to prescribe standards for these CFL (42 U.S.C. 6295(bb)), and to require that test procedures for these lamps be "based on the test methods for compact fluorescent lamps used under the August 9, 2001, . version of the Energy Star program." (42 U.S.C. 6293(b)(12)) Therefore, DOE adopted 10 CFR part 430, subpart B, appendix W ("Uniform Test Method for Measuring the Energy Consumption of Medium Base Compact Fluorescent Lamps"), which incorporates by reference the test procedures for medium base CFLs contained in the Energy Star program requirements. 71 FR 71340, 71347, 71367 (Dec. 8, 2006). As a result of the adoption of appendix W, DOE has test procedures for medium base CFLs that appear in both appendix W and appendix R.

Additional DOE rulemakings conducted pursuant to EPCA or congressional action to amend the statute itself periodically make modifications to the lamps test procedure necessary. For example, section 325(i)(5) of EPCA directs DOE to consider whether the standards in effect for fluorescent and incandescent lamps should be amended to be applicable to "additional" GSFL [2], and, if so, to adopt standards for such lamps. (42 U.S.C. 6295(i)(5)) DOE is addressing these requirements in a separate energy conservation standards rulemaking that also considers revisions to the existing energy conservation standards for GSFL and IRL. DOE published a notice of proposed rulemaking (NOPR) in that proceeding in the **Federal Register** on April 13, 2009 (hereafter referred to as the energy conservation standards NOPR).[3] The current DOE test procedures for lamps do not provide methods for testing some of the additional lamps for which DOE is proposing standards in the energy conservation standards NOPR.

In addition, on December 19, 2007, the President signed the Energy Independence and Security Act (Pub. L. 110–140) (EISA 2007), which makes numerous amendments to EPCA. Among these are amended energy conservation standards for IRL and new standards for GSIL. EISA 2007 also incorporates into EPCA several definitions related to products covered by this rulemaking. For all covered products, EISA 2007 amended EPCA to direct DOE to include in its test procedures a measure of standby mode and off mode energy consumption, if feasible. (42 U.S.C. 6295(gg)(2))

The NOPR in this rulemaking sets forth in greater detail the authority for, development of, and background for DOE's current test procedures for lamps. 73 FR 13465, 13466–67 (March 13, 2008) (the March 2008 NOPR).

*B. History of This Rulemaking*

As explained in the March 2008 NOPR, during the Framework Document stage of the energy conservation standards rulemaking for lamps, DOE initially stated that it did not intend to update its test procedures for these products. 73 FR 13465, 13468 (March 13, 2008). However, certain stakeholders responded with detailed comments about why and how DOE should incorporate into its regulations the current editions of lamps test procedures referenced in the regulations, and DOE ultimately decided that such updates were warranted. *Id.* at 13468–69. DOE also became aware that certain technical modifications were warranted in its test procedures. These technical modifications included specifying the type of reference ballast used to test fluorescent lamps, revising the calculation of lamp efficacy, and adopting a test method for the measurement and calculation of correlated color temperature (CCT). *Id.* at 13468. As indicated above, DOE commenced a rulemaking for test procedure revisions needed to address additional GSFL being considered for energy conservation standards, as well as to address recent amendments to EPCA.

To this end, DOE issued the March 2008 NOPR, which proposed a number of revisions to the test procedures for lamps. These revisions consisted largely of: (1) Referencing the most current versions of several lighting industry standards incorporated by reference; (2) adopting certain technical changes and clarifications; and (3) expanding the test procedures to accommodate new classes of lamps to which coverage was extended by EISA 2007 or may be extended by the energy conservation standards rulemaking. The March 2008 NOPR also addressed the new statutory requirement to expand test procedures to incorporate a measure of standby mode and off mode energy consumption.

The proposals in the March 2008 NOPR were addressed at a public meeting on March 10, 2008, that also addressed the concurrent advance notice of proposed rulemaking (ANOPR; 73 FR 13620) regarding energy efficiency standards for lamps.[4] In addition, DOE invited written comments, data, and information on the March 2008 NOPR through May 27, 2008.

Stakeholders raised the following issues in comments on the March 2008 NOPR:

- DOE does not need to revise energy conservation standards to account for self-absorption because existing test protocols already correct for this factor;
- Limiting the testing of GSFL to one of the three testing methods in IESNA LM–9–99 limits flexibility of lamp designs;
- GSFL should be tested on low-frequency ballasts until industry moves to high frequency;
- GSFL lamp efficacy should be rounded to the nearest whole number instead of the nearest tenth;
- The reference for calculating CCT should be changed from an article in the

[2] "[A]dditional" GSFL refers to any GSFL to which the energy conservation standards rulemaking extends coverage. DOE notes that this statutory provision previously applied to additional general service incandescent lamps as well, but Congress subsequently revoked DOE's authority to consider standards for these lamps and instead set prescriptive standards by statute.

[3] "Energy Conservation Standards for General Service Fluorescent Lamps and Incandescent Reflector Lamps," Docket No. EE–2006–STD–0131, RIN 1904–AA92. 74 FR 16920 (April 13, 2009).

[4] Although issued on February 21, 2008 and posted on the DOE Web site shortly thereafter, the test procedure NOPR and energy conservation standards ANOPR were formally published in the **Federal Register** on March 13, 2008.

Journal of the Optical Society of America to CIE Publication 15–2004;

- CCT should not be included in the definition of "basic model" for GSFL;
- CCT should be rounded to the nearest ten kelvin instead of the nearest unit;
- DOE should not adopt test procedures for lamps until a determination is issued adding them as a covered product;
- DOE should not establish test procedures for lamps that are not contained in ANSI standards; and
- DOE should eliminate the requirement for pre-production notification.

*C. Summary of the Final Rule*

This final rule amends DOE's current test procedures for electric lamps to achieve four results:

- Update several lighting industry standards incorporated by reference;
- Adopt certain technical changes and clarifications;
- Expand the test procedures to accommodate additional lamps for which EISA 2007 established energy conservation standards; and
- Address the statutory requirement to expand test procedures to incorporate a measure of standby mode and off mode energy consumption.

These amendments are summarized below.

1. Updates to Test Procedure References

In seeking to implement recent amendments to EPCA, DOE determined that several of the lighting industry standards referenced in 10 CFR part 430 have been superseded by new editions, withdrawn, or, in many cases, are no longer commercially available. Today's final rule discusses the amendments to the test procedures for GSFL, IRL, GSIL, and CFL that are necessary to incorporate the applicable industry standards. To ensure the test procedures reflect the most up-to-date industry standards and practices, DOE updates the CFR to contain the most recent versions of certain industry testing references and examines whether the new versions affect the measure of energy efficiency under existing energy conservation standards. (42 U.S.C. 6293(e))

Specifically, today's final rule incorporates the following industry standards into the test procedure by reference: ANSI C78.375–1997, "American National Standard for Fluorescent Lamps—Guide for Electrical Measurements"; ANSI/IEC C78.81–2005, "American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical Characteristics"; ANSI/IEC C78.901–2005, "American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics"; and ANSI C82.3–2002, "American National Standard for Lamp Ballasts—Reference Ballasts for Fluorescent Lamps." These revisions of ANSI standards replace the older standards, C78.375–1991, C78.1–1991, C78.2–1991, C78.3–1991, and C82.3–1983, incorporated by reference in the Interim Final Rule on Test Procedures for Fluorescent and Incandescent Lamps published in the **Federal Register** on September 28, 1994 (59 FR 49468) (hereafter the September 1994 Interim Final Rule).

This final rule also incorporates into the test procedure by reference the IESNA LM–9–1999 and IESNA LM–45–2000 standards for measuring the electrical and photometric attributes of fluorescent lamps and general service incandescent filament lamps, respectively. These versions of the IESNA standards replace the older standards, IESNA LM– 9–1988 and IESNA LM–45–1991, which are referenced in 10 CFR part 430, subpart B, appendix R.

Additionally, this final rule removes the references to IESNA LM–16–1993, which is a guide to the colorimetry of light sources, and IESNA LM–66–1991, which concerns the testing of medium-base compact fluorescent lamps. Both standards were incorporated by reference in the final rule on Test Procedures for Fluorescent and Incandescent Lamps published in the **Federal Register** on May 29, 1997 (62 FR 29221) (hereafter the May 1997 Final Rule). Since that time, LM–16–1993 has been withdrawn and is not commercially available, and LM–66–1991 has been superseded by the CFL test method, as described in section II.B below.

This final rule also incorporates by reference the method for measuring and specifying color rendering properties of light sources, found in the International Commission on Illumination (CIE) Publication 13.3–1995, which replaces the older publication, CIE Publication No. 13.2–1974 (corrected reprint 1993), incorporated by reference in the September 1994 Interim Final Rule. As discussed in this final rule and the March 2008 NOPR, DOE has determined that the updates to standards incorporated by reference would not significantly impact the measurement of lamp efficacy nor add any additional testing burden. (42 U.S.C. 6293(e))

2. Technical Amendments

In addition to updating standards incorporated by reference, this final rule requires that testing of GSFL be based on low-frequency reference ballasts, except for those lamps that can only be tested on high-frequency ballasts. Where the newly-referenced ANSI standards allow for both low- and high-frequency measurement, DOE's amended regulations require that manufacturers continue to report on lamp performance using the low-frequency reference ballast.

DOE also amends certain provisions in its regulations for calculating and reporting lamp efficacy. Specifically, DOE's amended regulations require that lamp efficacy for GSFL be rounded to the nearest tenth of a lumen per watt rather than the nearest whole number. This approach is consistent with the rounding practice required for the calculation of IRL efficacy set forth in the May 1997 Final Rule.

Furthermore, DOE is adopting a test method in this final rule for measuring and calculating CCT for fluorescent lamps and incandescent lamps. Correlated color temperature is used as a metric to define "colored fluorescent lamp" in 10 CFR 430.2 and "colored incandescent lamp" in 42 U.S.C. 6291(30)(EE). This amendment supports the lamps energy conservation standards rulemaking, in which DOE is considering establishing separate product classes for fluorescent lamps based on their CCT.

3. Amendments Related to Testing of New Coverage

The introduction of new 4-foot medium bipin and 2-foot U-shaped fluorescent lamps into the lighting market has effectively increased the number and types of lamps subject to DOE regulation under the existing definition of "fluorescent lamp." In addition, certain 8-foot slimline and 8-foot high-output lamps, as well as 8-foot very-high-output lamps and T5 fluorescent lamps, are not part of the current scope of coverage of DOE's regulations. In the energy conservation standards NOPR, DOE discusses whether to adopt energy conservation standards for some of these additional fluorescent lamps. As no decision has yet been made regarding standards for these lamps, DOE will adopt test procedures in this final rule only for products that are currently covered by standards. DOE will then adopt any necessary test procedures for any newly covered fluorescent lamps simultaneously with the extension of

coverage in the energy conservation standards final rule.

DOE is also amending the test procedure for GSIL. As stated earlier, EISA 2007 establishes energy conservation standards for GSIL. Consequently, the necessary portions of the GSIL test procedure (*e.g.*, specification of units to be tested) are not incorporated into DOE's existing test procedure, because these lamp types were not previously regulated. DOE is providing test procedures for these newly-covered GSIL in this final rule.

4. Off Mode and Standby Mode Energy Consumption

EISA 2007 directs DOE to amend its test procedure to incorporate a measure of off mode and standby mode energy consumption, if technically feasible. (42 U.S.C. 6295(gg)(2)) As discussed in further detail below, DOE believes that measuring off mode and standby mode energy consumption is not applicable to GSFL, IRL, and GSIL because, according to the definitions of "off mode" and "standby mode," current technologies of GSFL, IRL, and GSIL do not employ these two modes of operation. As such, DOE is not expanding the test procedure to incorporate measurement methods for off mode or standby mode energy consumption of GSFL, IRL, and GSIL.

5. Effect of Test Procedure Revisions on the Measure of Energy Efficiency

In amending a test procedure, EPCA directs DOE to determine to what extent, if any, the test procedure would alter the measured energy efficiency of the covered product. (42 U.S.C. 6293(e)(1)) If the amended test procedure alters the measured efficiency, the Secretary must determine the average efficiency level under the new test procedure of products that minimally complied with the applicable energy conservation standard prior to the test procedure amendment, and must set the standard at that level. (42 U.S.C. 6293(e)(2)) In addition, any existing model of a product that complied with the previously applicable standard would be deemed to comply with the new standard. (42 U.S.C. 6293(e)(3)) These provisions prevent changes in a test procedure from indirectly altering the applicable Federal energy conservation standard. They also prevent the new test procedure from forcing products out of compliance that complied with standards using the previous test procedure.

Bearing in mind these applicable statutory provisions, DOE has determined the modifications to the test procedures adopted in this final rule do not alter the measured efficiency of these products. Therefore, DOE concludes that no changes to the energy conservation standards are necessary.

## II. Discussion

At the March 10, 2008 public meeting and in the March 2008 NOPR, DOE requested comment on the following subjects: (1) Test procedure reference updates; (2) high-frequency fluorescent ballast testing; (3) calculation of fluorescent lamp efficacy; (4) measurement and calculation of correlated color temperature; (5) general service fluorescent lamp basic model; (6) reference ballast settings for added fluorescent lamp coverage; (7) additions to the general service incandescent lamp test procedure; and (8) off mode and standby mode energy consumption. The discussion below summarizes and responds to the comments DOE received.

### *A. Updates to Test Procedure References*

In the March 2008 NOPR, DOE proposed to update references to outdated industry standards in the existing test procedure. Since the publication of the NOPR in March 2008, DOE published a final rule (hereafter referred to as the *En Masse* Final Rule) to codify the energy conservation standards and related definitions prescribed by EISA 2007. 74 FR 12058 (March 23, 2009). This *En Masse* Final Rule added section 430.3 to 10 CFR part 430, subpart A. Section 430.3 includes all of the materials incorporated by reference in the definitions at 10 CFR 430.2 and test procedures in subpart B. While this change has not affected the nature of the definitions nor the incorporated references, it does require this final rule to modify the location of the industry standards it incorporates by reference in the CFR.

The National Electrical Manufacturers Association (NEMA) generally agreed with this proposal, mentioning that it would incorporate the most up-to-date industry standards and practices. (NEMA, No. 25 at p. 3; Public Meeting Transcript, No. 20 at pp. 19–20)[5] As explained below, when considering an updated industry standard, DOE examined each one to ensure that revising DOE's regulations would not result in a test procedure that is unduly burdensome to conduct. DOE also examined the updated standards to determine whether the amended test procedure would significantly change the measured lamp efficacy (thereby necessitating amendments to the energy conservation standard itself). (42 U.S.C. 6293(e))

*IESNA LM–9–1999.* DOE considered updating references to IESNA LM–9–1988 with IESNA LM–9–1999, the most current version. Both versions of the IESNA standards describe procedures for assessing electrical and photometric characteristics of fluorescent lamps. However, as explained below, the 1999 version of IESNA LM–9 incorporated two modifications that DOE thought could potentially result in a significant change in the measured lamp efficacy if adopted in DOE's test procedures.

IESNA LM–9–1999 adds specifications for self-absorption correction when taking light output measurements. In the March 2008 NOPR, DOE stated that this addition had the potential to raise efficacy by as much as 5 to 10 percent, except in laboratories that already account for this factor. Considering this potential change in measured efficacy, DOE tentatively concluded it would revise and develop new or amended efficacy standards for fluorescent lamps in its energy conservation standards rulemaking where appropriate. 73 FR 13465, 13471 (March 13, 2008) NEMA contended that no adjustments are necessary, stating that any laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology (NIST) would account for a self-absorption factor during the calibration process. NEMA advised DOE to consult with NIST, which is responsible for government calibration methods. (NEMA, No. 25 at p. 3; Public Meeting Transcript, No. 20 at pp. 20–21)

After consulting with NIST and reviewing the existing test procedure, DOE agrees with NEMA that the measure of efficiency is not changed by the new IESNA LM–9–1999 standard, and as a result, the applicable energy conservation standards do not need to be revised. The test procedure requires that "[t]he testing for general service fluorescent lamps, general service incandescent lamps, incandescent reflector lamps, and medium base compact fluorescent lamps, shall be performed in accordance with Appendix R to this subpart and shall be conducted by test laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or by an accrediting

[5] A notation in the form "NEMA, No. 25 at p. 3" identifies a written comment that DOE has received and has included in the docket of its test procedure rulemaking for GSFL, IRL, and GSIL (Docket No. EERE–2007–BT–TP–0013; RIN number 1904–AB72). This particular notation refers to a comment: (1) By the National Electrical Manufacturers Association; (2) in document number 25 in the docket of the test procedure rulemaking; and (3) appearing on page 3.

organization recognized by NVLAP." (10 CFR 430.25) Because NVLAP accreditation includes procedures to correct for self-absorption during the calibration process, DOE concludes that the self-absorption correction provisions in IESNA LM–9–1999 would not result in any significant change in measured lamp efficacy. Therefore, DOE believes that applicable energy conservation standards do not need to be adjusted for this factor. (42 U.S.C. 6293(e))

In preparing the March 2008 NOPR, DOE discovered a second difference between IESNA LM–9–1988 and the updated 1999 version regarding electrical settings used during lamp measurements. The updated IESNA standard allows measurements to be taken with the lamp operating and stabilized under one of three conditions: (1) At the specified input voltage to the reference circuit; (2) at the rated lamp power; or (3) at a specified current. In contrast, the 1988 version of the IESNA standard requires that measurements be taken at the input voltage specified by the reference circuit. Although all three measurement techniques are valid methods to test fluorescent lamps, it was DOE's understanding that testing under these different techniques could result in significantly different efficacies, so DOE proposed in the March 2008 NOPR to limit the testing of lamps to one method, with the lamp operating and stabilized at the specified input voltage to the reference circuit. 73 FR 13465, 13471 (March 13, 2008)

NEMA commented that incorporating additional lamp testing options, consistent with IESNA LM–9–1999, would provide flexibility for testing new lamp designs and system applications in the future. NEMA stated that it does not believe that any significant measurement differences exist between the three methods. NEMA also contended that restricting testing to one method would create an undue hardship for manufacturers because additional testing would be required to demonstrate compliance whenever a manufacturer would otherwise choose to use one of the alternative test methods. NEMA urged DOE to consult with IESNA and NIST to determine whether the selection of test methods should be restricted. (NEMA, No. 25 at pp. 3–4)

In response, DOE consulted with NIST and an advisory member of the IESNA Test Procedures Committee, and tested several lamps using the three lamp testing options. In testing several 4-foot medium bipin lamps using the three methods specified in LM–9–1999, DOE found that the measured efficacy values differed by up to 3.5 percent, a significant variation among test methods. DOE believes that allowing fluorescent lamps to be tested using these three methods will affect the measured efficacy and lead to inconsistent reporting. As the purpose of the test procedures is to provide a consistent measurement of lamp efficacy across various lamps and lamp manufacturers, DOE has decided in this final rule to limit the testing of GSFL to one method (the method currently employed by the existing test procedure): with the lamp operating and stabilized at the specified input voltage to the reference circuit. DOE does not believe that limiting the testing of GSFL to this method would be unduly burdensome to manufacturers because DOE is choosing to continue the existing method for testing.

*Other Referenced Standards.* In the March 2008 NOPR, DOE proposed adopting several other updated industry standards incorporated by reference in DOE's lighting regulations. For these other industry standards, DOE tentatively determined that the update would neither result in a test procedure that was unduly burdensome to conduct nor significantly change the measured lamp efficacy. 73 FR 13465, 13468–13472 (March 13, 2008) DOE did not receive comments on any of these other proposed updates. Therefore, in this final rule, DOE makes the following updates to industry standards incorporated by reference:

(1) incorporate by reference ANSI/IEC C78.81–2005 and ANSI/IEC C78.901–2005 and delete references to ANSI C78.1–1991 in the definition of "cold-temperature fluorescent lamp" in 10 CFR 430.2;

(2) incorporate by reference ANSI/IEC C78.81–2005 and delete the reference to ANSI C78.1–1991 in paragraph (3) of the definition of "fluorescent lamp" in 10 CFR 430.2;

(3) incorporate by reference ANSI/IEC C78.81–2005 and ANSI/IEC C78.901–2005 and delete the references to ANSI C78.1–1991, ANSI C78.2–1991, and ANSI C78.3–1991 in the test methods and measurements of GSFL (10 CFR 430, subpart B, appendix R);

(4) incorporate by reference ANSI/IEC C78.81–2005 and ANSI/IEC C78.901–2005 and delete the reference to ANSI C78.2–1991 in 10 CFR 430.3;

(5) replace the reference to ANSI C78.375–1991 with ANSI C78.375–1997 in 10 CFR 430.3 and 10 CFR part 430, subpart B, appendix R;

(6) replace the reference to ANSI C82.3–1983 with ANSI C82.3–2002 in 10 CFR 430.3 and 10 CFR part 430, subpart B, appendix R;

(7) replace the references to IESNA LM–9–1988 in 10 CFR 430.3 and 10 CFR part 430, subpart B, appendix R with references to IESNA LM–9–1999, providing that during testing, the lamp must be operating and stabilized at the specified input voltage to the reference circuit;

(8) incorporate by reference IESNA LM–45–2000 and delete references to IESNA LM–45–1991 in 10 CFR 430.3 and 10 CFR part 430, subpart B, appendix R;

(9) delete the reference to IESNA LM–16–1993 from 10 CFR part 430, subpart B, appendix R;

(10) incorporate by reference CIE Publication 13.3–1995 and delete references to CIE Publication 13.2–1974 in 10 CFR 430.2 and 10 CFR part 430, subpart B, appendix R;

(11) delete references to CIE Publication 13.2–1974 in 10 CFR 430.3;

(12) incorporate by reference CIE 15–2004 in 10 CFR 430.3 and 10 CFR part 430, subpart B, appendix R.

*B. Medium Base Compact Fluorescent Lamps*

In the March 2008 NOPR, DOE proposed to delete references to test procedures for medium base compact fluorescent lamps from 10 CFR part 430, subpart B, appendix R, because the December 2006 Final Rule [6] added test procedures conforming with EPACT 2005. Under 42 U.S.C. 6293(b)(12)(A), EPCA requires test procedures for medium base CFL to be based on the August 9, 2001, version of the ENERGY STAR program requirements for CFL (*i.e.*, version 2.0). Accordingly, the December 2006 Final Rule incorporated version 2.0 as DOE's test procedure for CFL. (10 CFR part 430, subpart B, appendix W) In response to the March 2008 NOPR, NEMA commented that appendix W suitably addresses the need for test procedures for medium base compact fluorescent lamps. (NEMA, No. 25 at p. 2) Therefore, in this final rule, DOE amends the test procedure to delete references to testing medium base compact fluorescent lamps from 10 CFR 430.3 and 10 CFR part 430, subpart B, appendix R. In addition, DOE now references appendix W of subpart B instead of appendix R of subpart B in 10 CFR part 430 when indicating the

[6] To implement recent amendments to EPCA contained in the Energy Policy Act of 2005 (Pub. L. 109–58) (EPACT 2005), DOE published a final rule in the **Federal Register**, which prescribed test procedures for eleven types of products for which EPACT 2005 identified specific test procedures (including medium screw-based compact fluorescent lamps) on which the Federally mandated test procedures are to be based. 71 FR 71340 (Dec. 8, 2006).

appropriate test procedure for medium base compact fluorescent lamps.

*C. High-Frequency Fluorescent Ballast Testing*

In the March 2008 NOPR, DOE noted a potential problem when incorporating ANSI/IEC C78.81–2005. Specifically, ANSI/IEC C78.81–2005 allows several lamps to be tested on high-frequency ballasts. However, DOE noted that the same lamp tested on different reference ballasts may have different efficacies. Although high-frequency testing specifications are not yet available for all of DOE's covered fluorescent lamp types, ANSI/IEC C78.81–2005 does provide low-frequency reference ballast specifications for all covered fluorescent lamps. Therefore, to maintain consistency and comparability across testing, DOE proposed to require testing of GSFL using low-frequency ballasts when possible.

NEMA generally agreed with this proposal. In contrast, Pacific Gas and Electric stated that testing on high-frequency ballasts should not be limited to only those products for which a low-frequency reference ballast does not exist, although reasoning for this opinion was not provided. (NEMA, No. 25 at p. 4; Public Meeting Transcript, No. 20 at p. 25) NEMA added that GSFL will mainly be used in high-frequency systems in the future, so at that point, lamp efficacy should be determined using high-frequency reference conditions to accurately reflect the commercial market. According to NEMA, two conditions must exist for this shift to occur: (1) Standards defining high-frequency reference ballasts must produce accurate, repeatable results; and (2) test equipment must be affordable and available for all laboratories. (NEMA, No. 25 at p. 4) NEMA suggested having periodic discussions with DOE to monitor these developments.

In response to these comments, DOE will monitor the development of testing standards of GSFL over time. Ultimately, there may prove to be benefits related to characterization of lamps that can use high-frequency ballasts by testing with a high-frequency reference ballast. In the future, DOE will consider amendments to its test procedure for lamps to include testing on high-frequency reference ballasts, keeping in mind the two criteria mentioned above. However, for this final rule, DOE is amending the test procedure to require testing of GSFL on low-frequency ballasts except when only high-frequency reference ballasts are specified. In such a case where only high-frequency ballast specifications are available, the lamp should be tested on a high-frequency reference ballast. As discussed in the March 2008 NOPR, DOE does not believe this amendment will result in any change in the measured efficacies of fluorescent or incandescent lamps or be unduly burdensome to manufacturers. In addition, DOE did not receive any comments in response to the NOPR that disagreed with this conclusion.

*D. Measurement and Calculation of Correlated Color Temperature*

DOE uses CCT as a metric to define both "colored fluorescent lamp" and "colored incandescent lamp." In the energy conservation standards NOPR, DOE proposed to develop separate product classes and efficacy standards for fluorescent lamps based on CCT. 74 FR 16920, 16937–38 (April 13, 2009). However, the existing test procedures for fluorescent and incandescent lamps do not provide guidance or methodologies for determining or calculating CCT. To resolve this, DOE proposed in the March 2008 NOPR to include a reference to IESNA LM–9–1999 in the definition of "colored fluorescent lamp" under 10 CFR 430.2 and in 10 CFR part 430, subpart B, appendix R as a test method for measuring and calculating CCT for fluorescent lamps. For incandescent lamps, EISA 2007 introduced a new statutory definition for "colored incandescent lamp" that referenced a method for calculating CCT contained in the *Journal of the Optical Society of America* (hereafter referred to as the Journal Article).[7] To maintain consistency, DOE proposed to incorporate the same reference into the incandescent lamp test procedure.

NEMA agreed that IESNA LM–9–1999 is the appropriate test procedure to use to determine CCT for a fluorescent lamp. (NEMA, No. 25 at p. 5; Public Meeting Transcript, No. 20 at p. 29) Regarding calculation of CCT for incandescent lamps, NEMA recommended the procedure proposed in the *Journal Article*. However, NEMA stated that DOE should incorporate this article into the test procedure by referencing a CIE report, which in turn refers to the article. NEMA prefers this approach because the industry publication is updated by experts in the field, so manufacturers could be sure that information contained in each revision would be the most up-to-date at that time. (NEMA, No. 25 at p. 5)

DOE agrees to reference the article in the *Journal of the Optical Society of America* by incorporating CIE 15–2004, Third Edition, *Technical Report—Colorimetry*, into the test procedure. By referencing this current industry publication instead of the Journal Article, DOE ensures that the test procedure references the most accurate information known to the industry at the time of this rulemaking. For example, the CIE Technical Report contains an updated constant for the Planck equation, which had changed since the time the Journal Article was published. DOE does not believe that incorporating CIE 15–2004 will result in any additional testing burden or significant change in measured lamp efficacy. (42 U.S.C. 6293(e)) If subsequent revisions to CIE 15–2004 are made by the industry in the future, DOE will consider adopting an updated version in a later rulemaking.

In the March 2008 NOPR, DOE proposed test procedures that required CCT to be rounded to the nearest unit (measured in kelvin (K)). 73 FR 13465, 13479 (March 13, 2008). NEMA commented that rounding CCT to the nearest unit demonstrates a false level of accuracy. Instead, NEMA recommended rounding CCT to the nearest ten kelvin. (NEMA, No. 25 at pp. 5–6) After consulting with NIST, DOE agrees that rounding CCT to the nearest unit is unnecessary because distinguishing between single digits in CCT is not meaningful. Since all laboratories are able to measure CCT to three significant figures (a typical value is on the order of 4100K), DOE will require manufacturers to round CCT to the nearest ten kelvin.

*E. Calculation of Fluorescent Lamp Efficacy*

In the existing test procedure, lamp efficacy for IRL is rounded to the nearest tenth of a lumen per watt. (10 CFR 430.23(r)(3)) For GSFL, although minimum lamp efficacy requirements for GSFL in EPCA are specified to the nearest tenth of a lumen per watt, for all GSFL standards, the tenth lumen per watt decimal place is zero (*e.g.*, the minimum efficacy requirement for 4-foot medium bipin lamps is 75.0 lumens per watt). In contrast to IRL, which currently requires efficacy measurements to the nearest tenth of a lumen per watt, lamp efficacy measurements for GSFL in the existing test procedure are rounded to the nearest whole number. (10 CFR 430.23(r)(2)) DOE believes that the accuracy of efficacy measurements is crucial in order to better compare one product to another. This accuracy

[7] "IESNA Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps," *Journal of the Optical Society of America*, Vol. 58, pp. 1528–1535 (1968).

allows DOE to more effectively establish energy conservation standards, thereby potentially decreasing energy use under DOE regulations. Therefore, in the March 2008 NOPR, DOE proposed to revise the GSFL test procedure (10 CFR 430.23(r)) and the test procedure definition of "lamp efficacy" (10 CFR part 430, subpart B, appendix R, paragraph 2.6), such that all efficacy measurements for these lamps are rounded to the nearest tenth of a lumen per watt. The results of such an amendment would be higher accuracy measurements and more consistent test procedures across lighting products without increasing testing burdens on manufacturers. In addition, in the energy conservation standards ANOPR, DOE proposed candidate standard levels that were rounded to the nearest tenth of a lumen per watt. 73 FR 13620, 13685–86 (March 13, 2008).

In response to the energy conservation standards ANOPR, NEMA commented that energy efficiency standards should not be carried out to the tenths decimal place, but instead rounded to the nearest whole number. 74 FR 16920, 16945–47 (April 13, 2009). Additionally, in response to the March 2008 NOPR for this test procedure rulemaking, NEMA expressed concern that rounding energy efficiency standards to the nearest tenth lumen per watt could result in unforeseen consequences (unexplained). NEMA urged DOE to continue to require rounding to the nearest whole number in this final rule and then to revisit the subject in a future rulemaking after the energy conservation standards rulemaking is complete. (NEMA, No. 25 at p. 4; Public Meeting Transcript, No. 20 at p. 27) In contrast, the American Council for an Energy Efficient Economy (ACEEE) supported rounding data to the tenths place, because more precise data would facilitate the determination of the appropriate energy conservation standard. (Public Meeting Transcript, No. 20 at p. 27)

In response to these comments, DOE has tentatively decided for the present to continue to round energy conservation standard levels for the subject lamps to the nearest whole number for the reasons that follow. In the ongoing energy conservation standards rulemaking, DOE's calculations of efficacy levels and subsequent analyses have been based on certification and compliance reports submitted by manufacturers. Because these manufacturer reports round numbers to the nearest lumen per watt, DOE believes it would be unjustified to establish an energy conservation standard for GSFL to the nearest tenth of a lumen per watt, because the data are not currently available to support that level of specificity. However, DOE agrees with ACEEE and still believes that rounding to the nearest tenth of a lumen per watt would maximize energy savings. Therefore, in a future standards rulemaking, DOE plans to revisit this issue. In order to be able to round future energy conservation standards to the nearest tenth of a lumen per watt, DOE is amending the test procedure through today's final rule to require reported efficacy measurements for GSFL to be rounded to the nearest tenth of a lumen per watt, even though current minimum efficacy standards would only be specified to the nearest lumen per watt. For example, a lamp with a measured efficacy of 82.5 lumens per watt or above would meet an energy conservation standard of 83 lumens per watt. DOE does not believe that this change in rounding convention for reported efficacies would result in any additional testing burden or significant change in measured lamp efficacy because manufacturers routinely generate testing results that would allow reporting to at least the tenth of a lumen per watt level. In addition, because DOE is continuing to set energy conservation standard levels at the nearest whole lumen per watt level, today's test procedure amendment would not alter whether any GSFL would comply with existing standards. (42 U.S.C. 6293(e))

### *F. General Service Fluorescent Lamp Basic Model*

To demonstrate compliance with an efficacy standard, manufacturers must test a basic model. 10 CFR 430.24(r). In the May 1997 Final Rule, DOE stated that the definition of "basic model" for GSFL includes all lamps with essentially identical light output, power input, and luminous efficacy, regardless of their CCT (62 FR 29221, 29232 (May 29, 1997)). However, because the energy conservation standards ANOPR considered establishing product classes based on CCT, DOE proposed to amend the definition of "basic model" for GSFL in the March 2008 NOPR to require that the lamps have similar CCTs. 73 FR 13465, 13474 (March 13, 2008).

At the public meeting, NEMA mentioned that the lighting industry uses nominal CCT rather than a precisely calculated CCT to designate the color of GSFL and urged DOE to add a CCT criterion to the basic model only if a tolerance factor were developed. (Public Meeting Transcript, No. 20 at pp. 31–32) In a later written comment, NEMA modified its position, stating that CCT should not be incorporated into the GSFL basic model. NEMA argued that such a requirement would increase the number of basic models on which manufacturers needed to report, thereby greatly increasing the burden on manufacturers. Instead, NEMA proposed a method similar to the one used for non-colored incandescent lamps, in which manufacturers would only be required to provide CCT data for lamps that are required to meet less-stringent energy conservation standards. (NEMA, No. 25 at p. 5) Any lamp for which CCT is not reported would be presumed to be part of the product class for which higher energy conservation standards are established.

In this final rule, DOE has decided to not explicitly include CCT in the definition of "basic model" for GSFL. Instead, DOE believes that because the existing definition of "basic model" requires that lamps within one basic model to have essentially identical efficacy, it is in fact implicit that lamps with largely different CCT (and therefore efficacy) should be tested as separate basic models. Thus, DOE agrees with NEMA that separate basic models are not necessary for each measured CCT value. DOE believes that manufacturers should group lamps with respect to CCT based on the ANSI C78.375–1997 industry standard which provides tolerances for a lamp to be designated a certain nominal CCT. This method would ensure that similar lamps are grouped together and maintain consistency with product class divisions proposed in the energy conservation standards NOPR. DOE does not believe that there is a significant difference in measured efficacy among the lamps that fall within the CCT tolerances designated in the ANSI standard.

### *G. Reference Ballast Settings for Added Fluorescent Lamp Coverage*

When the March 2008 NOPR was published, DOE was considering expanding coverage of the fluorescent lamp standard in the energy conservation standards ANOPR to include additional 8-foot single pin slimline and 8-foot recessed double contact high-output lamps (*i.e.*, lamps not yet regulated). In addition, the introduction of new 4-foot medium bipin and 2-foot U-shaped fluorescent lamps into the lighting market had effectively expanded DOE's scope of regulation under the existing definition of "fluorescent lamp" (*i.e.*, lamps already regulated but without adequate test procedures). Therefore, DOE proposed test procedures for these additional lamps.

NEMA commented that DOE should not establish test procedures for lamps

that may be but have not yet been extended coverage by the energy conservation standards rulemaking. NEMA claimed that instituting generic test conditions, particularly reference ballast settings, without knowing the specific GSFL to which the conditions may apply could have unexpected consequences. In particular, such test procedures could constrain innovation by affecting the introduction of new lamps into the market. NEMA suggested that DOE should establish reference test conditions for newly covered GSFL in the energy conservation standards rulemaking rather than this final rule. (NEMA, No. 25 at pp. 6–8; Public Meeting Transcript, No. 20 at pp. 39–40)

DOE does not agree that imposing test conditions for future covered products would limit innovation in the lighting industry. DOE maintains a test procedure waiver process specifically for this reason. Under 10 CFR 430.27, DOE's regulations state, "Any interested person may submit a petition to waive for a particular basic model any requirements of § 430.23, or of any appendix to this subpart, upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics, or water consumption characteristics (in the case of faucets, showerheads, water closets, and urinals) as to provide materially inaccurate comparative data." (10 CFR 430.27(a)(1)) This waiver process exists to avoid constraining innovation in the industry. Thus, DOE believes it is not preventing the introduction of future products into the market by specifying generic test conditions in this final rule.

However, DOE agrees with NEMA's second comment that it should not yet adopt test procedures for potentially new covered products. As these lamps are not yet regulated by DOE, DOE believes it unnecessary to establish test procedures for them at this time. Therefore, in the energy conservation standards final rule, DOE will set forth test procedure provisions (based upon those proposed in the March 2008 NOPR) for any additional lamp types to which DOE extends coverage. DOE will not adopt test procedures for any lamps excluded from its energy conservation standards regulations.

Regarding currently-regulated GSFL that are on the market today, but do not have reference ballast settings listed in ANSI/IEC C78.81–2005 or ANSI/IEC C78.901–2005, NEMA supported the adoption of the reference ballast settings proposed for 2-foot U-shaped lamps in the March 2008 NOPR. NEMA also committed to developing standardized test conditions that DOE could consider for several other covered lamp types for which no test conditions currently exist. (NEMA, No. 25 at p. 8)

While DOE appreciates NEMA's offer, the organization did not set a timeframe for developing new test conditions, and DOE believes that this final rule needs to establish test conditions for all lamps subject to existing energy conservation standards. In addition, DOE believes that the test conditions set forth in the March 2008 NOPR are appropriate for most commercially-available lamps. DOE arrived at the ballast settings for these lamps by determining the appropriate lamp replacement that exists in the relevant industry standard and using the corresponding reference ballast settings for all lamps that fall into that category. However, if NEMA supplies test conditions for industry standards, DOE will consider incorporating them into its test procedure regulations in a subsequent rulemaking.

*H. Test Procedures for Added General Service Incandescent Lamp Coverage*

In the March 2008 NOPR, DOE proposed to amend the existing test procedure in order to: (1) specify the units to be tested in 10 CFR 430.24(r)(1); (2) define the "basic model" for GSIL in 10 CFR 430.2; and (3) provide a method for calculating annual energy consumption and efficacy of GSIL. Because of the similarity in technology between GSIL and IRL, DOE proposed that additions to the GSIL test procedure be implemented in the same manner as in the corresponding IRL test procedure. NEMA agreed with DOE's proposal to insert language into the GSIL test procedures to maintain consistency with existing IRL test procedures and sampling methods. (NEMA, No. 25 at p. 8; Public Meeting Transcript, No. 20 at pp. 43–44) In light of the comments supporting the proposal, DOE is adopting these amendments as proposed.

*I. Off Mode and Standby Mode Energy Consumption*

Section 310(3) of EISA 2007 directs DOE to amend its test procedures for all covered products to incorporate a measure of off mode and standby mode energy consumption, if technically feasible. (42 U.S.C. 6295(gg)(2)) After careful review, DOE tentatively concluded in the March 2008 NOPR that current GSFL, IRL, and GSIL technologies do not employ a standby mode or off mode. In its comments, NEMA agreed that provisions for off mode and standby mode energy consumption do not apply to fluorescent and incandescent lamps, and that no measurement methods for these two modes need to be developed. (NEMA, No. 25 at p. 9; Public Meeting Transcript, No. 20 at p. 49) Therefore, in this final rule, DOE concludes that given the inapplicability of standby mode and off mode to these products, it is neither appropriate nor necessary to incorporate a measure of such energy use into DOE's test procedures for GSFL, IRL, and GSIL.

*J. Reduction of Burdensome Provisions*

Under 49 U.S.C. 6293(b), EPCA authorizes DOE to amend or establish new test procedures as appropriate for each covered product. EPCA states that "[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct." (42 U.S.C. 6293(b)(3))

In its written comments, NEMA stated DOE should take measures to reduce overly burdensome requirements of the test procedure to offset the increased reporting requirements for newly regulated general service incandescent lamps. Specifically NEMA urged DOE eliminate the pre-production notification requirement for all covered lamp types. (NEMA, No. 25 at p. 9; Public Meeting Transcript, No. 20 at pp. 44–46)

Pursuant to 42 U.S.C. 6295(i)(8), the statute provides that lamp manufacturers shall have 12 months from the commencement of production to test new products and to certify that they comply with the energy conservation standards. During this test period, however, new lamps that are sold shall meet the applicable standards. Prior to or concurrent with the distribution of a new model of GSFL or IRL, DOE requires that manufacturers or private labelers submit a statement that it has been determined that the lamp meets or exceeds the energy conservation standards, including a description of any testing or analysis the manufacturer or private labeler performed. (10 CFR 430.62(b)(2)) As stated in the May 1997 Final Rule, this "pre-production requirement" ensures that the 12 month test period is not used

to distribute substandard lamps. 62 FR 29221, 29233 (May 29, 1997).

As an alternative to the pre-production notification requirement, NEMA suggested that DOE should allow manufacturers to maintain evidence of compliance before launching a newly covered product, which the manufacturers could then provide upon DOE's request. NEMA commented that such an approach would free up industry resources that could then be used to satisfy the new reporting provisions. (NEMA, No. 25 at p. 9; Public Meeting Transcript, No. 20 at pp. 44–46) In response to NEMA's comment, DOE maintains that the pre-production notification requirement is a useful and necessary part of the certification and enforcement process. In particular, by requiring manufacturers to submit such a statement upon distribution of a new product, DOE is not only notified that a new lamp product is being manufactured or sold, but also that it meets applicable energy conservation standards. Therefore, in this final rule, DOE has decided not to eliminate this notification requirement. As manufacturers have been required to submit these statements in the past, DOE does not believe that maintaining the preproduction notification requirement would be unduly burdensome for manufacturers.

NEMA also argued that DOE should not require manufacturers to re-test or re-report basic models that are already covered under regulations and that would continue to meet the new standards prescribed by the energy conservation standards rulemaking. (NEMA, No. 25 at p. 10) Regarding re-testing of basic models that were already covered by regulations, EPCA states, "Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency, energy use, or water use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard." (42 U.S.C. 6293(e)(3)) Therefore, if existing compliance reports show that a basic model already meets the new energy efficiency standards, no additional testing is necessary once the new standards go into effect. However, DOE notes that in the energy conservation standards NOPR, it has acknowledged that high-CCT lamps may have lower efficacies and warrant separate standards. Therefore, if existing compliance reports combine high- and low-CCT lamps into one basic model, these lamps may require re-testing as separate basic models to ensure that all lamps meet the amended energy conservation standards.

## III. Effect of Test Procedure Revisions on the Measure of Energy Efficiency

In amending a test procedure, section 323(e) of EPCA directs DOE to determine to what extent, if any, the test procedure would alter the measured energy efficiency of the covered product. (42 U.S.C. 6293(e)(1)) If the amended test procedure alters the measured efficiency, the Secretary must determine the average efficiency level under the new test procedure of products that minimally complied with the applicable energy conservation standard prior to the test procedure amendment, and must set the standard at that level. (42 U.S.C. 6293(e)(2)) In addition, any existing model of a product that complied with the previously applicable standard would be deemed to comply with the new standard. (42 U.S.C. 6293(e)(3)) These provisions prevent changes in a test procedure from indirectly altering the applicable Federal energy conservation standard. They also prevent the new test procedure from forcing products out of compliance that complied with standards using the previous test procedure.

In the March 2008 NOPR, DOE stated that substituting references to LM–9–1999 in place of references to LM–9–1988 might affect the measure of energy efficiency and necessitate a change in energy conservation standards for fluorescent lamps. LM–9–1999 added a specification for self-absorption correction when taking light output measurements. In the NOPR, DOE expressed its belief that this could raise calculated efficacy by as much as 5 or 10 percent and resolved to amend efficacy standards as appropriate. 73 FR 13465, 13471 (March 13, 2008). As discussed above, NEMA commented that self-absorption is already accounted for in the calibration process, and, therefore, energy efficiency standards would not have to be amended. (NEMA, No. 25 at p. 3) Consultation with NIST revealed this to be true. Laboratories that test these lamps are required to account for self-absorption as part of the NIST accreditation process, in which all laboratories must participate to be qualified to test lamps for compliance. (See section II.A of this final rule for further details.)

Fully incorporating LM–9–1999 into the DOE test procedure would have expanded the number of methods permitted to measure lamp efficacy. After consultation with NIST and testing of actual lamps, DOE discovered that the new test methods would result in a significant difference in measured efficacy, thereby requiring DOE to change its energy efficiency standards. In order for the test procedure to provide a consistent measurement of lamp efficacy across various lamps and lamp manufacturers, DOE has decided in this final rule to continue to limit the testing of GSFL to one method: with the lamp operating and stabilized at the specified input voltage to the reference circuit. Because this was the only test method permitted in the existing test procedure, DOE concludes that energy conservation conservations standards will not be affected by the incorporation of LM–9–1999 and that maintaining this requirement will not be unduly burdensome. (See section II.A for details.)

Because no other test procedure amendments proposed by DOE would affect the measured energy efficiency, DOE concludes that no changes to the energy conservation standards are necessary.

## IV. Procedural Issues and Regulatory Review

### *A. Executive Order 12866*

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

### *B. National Environmental Policy Act*

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021.[8] Accordingly, neither an environmental assessment nor an environmental impact statement is required.

[8] Categorical Exclusion A5 provides: "Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended."

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov*.

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. DOE tentatively certified in the March 2008 NOPR that the proposed rule would not have a significant economic impact on a substantial number of small entities. 73 FR 13465, 13477 (March 13, 2008). DOE received no comments on this issue, and after again considering the potential impacts of this final rule on small entities, DOE reaffirms and certifies that finding.

*D. Paperwork Reduction Act*

This rulemaking imposes no new information or recordkeeping requirements. See March 13, 2008 NOPR, 73 FR 13465, 13477. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure by State, local, and Tribal governments, or by the private sector, of $100 million or more in any year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

*F. Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

*G. Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The final rule would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, Executive Order 13132 requires no further action.

*H. Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

*I. Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*J. Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2)

is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Executive Order 12630*

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*L. Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice and the Federal Trade Commission concerning the impact of the commercial or industry standards on competition.

Certain amendments and revisions in this final rule incorporate updates to commercial standards already codified in DOE's test procedure regulations in the CFR. As stated in the March 2008 NOPR, the Department has evaluated these updated standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the Federal Energy Administration Act, (*i.e.*, determine that they were developed in a manner that fully provides for public participation, comment, and review). 73 FR 13465, 13478 (March 13, 2008). DOE has consulted with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of these standards on competition, and neither recommended against their incorporation.

*M. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**V. Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this final rule.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on June 26, 2009.

**Steven G. Chalk,**

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons stated in the preamble, part 430 of chapter II of title 10, Code of Federal Regulations, is amended as set forth below:

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by:
■ a. Redesignating, in the definition of "Basic Model," paragraphs (16) through (26) as (17) through (27), and adding a new paragraph (16).
■ b. Revising the definitions of "Cold temperature fluorescent lamp," "Colored fluorescent lamp," and "Fluorescent lamp" paragraph (3).

The revisions and additions read as follows:

**§ 430.2 Definitions.**

* * * * *

*Basic Model* * * *

(16) With respect to general service incandescent lamps, means lamps that have essentially identical light output and electrical characteristics—including lumens per watt—and that do not have any differing physical or functional characteristics that affect energy consumption or efficacy.

* * * * *

*Cold temperature fluorescent lamp* means a fluorescent lamp specifically designed to start at −20 °F when used with a ballast conforming to the requirements of ANSI C78.81 (incorporated by reference; see § 430.3) and ANSI C78.901 (incorporated by reference; see § 430.3), and is expressly designated as a cold temperature lamp both in markings on the lamp and in marketing materials, including catalogs, sales literature, and promotional material.

*Colored fluorescent lamp* means a fluorescent lamp designated and marketed as a colored lamp, and that has either a CRI less than 40, as determined according to the method given in CIE 13.3 (incorporated by reference; see § 430.3), or a lamp correlated color temperature less than 2,500K or greater than 6,600K, as determined according to the method set forth in IESNA LM–9 (incorporated by reference; see § 430.3).

* * * * *

*Fluorescent lamp* * * *

(3) Any rapid-start lamp (commonly referred to as 8-foot high-output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.81 (incorporated by reference; see § 430.3).

* * * * *

■ 3. Section 430.3 is amended in paragraphs (c), (h), and (j) by:
■ a. Removing paragraph (c)(2) and redesignating paragraphs (c)(3) through (6) and (c)(8) through (12), as (c)(2) through (5) and (c)(9) through (13) respectively;
■ b. Removing the words "and Appendix R to Subpart B" from paragraph (c)(1), redesignated paragraph (c)(2), and (j)(3);
■ c. Removing paragraph (h)(1) and redesignating (h)(2) as (h)(1);
■ d. Removing paragraph (j)(7); and
■ e. Adding new paragraphs (c)(6) and (c)(8), revising newly redesignated paragraphs (c)(12) and (h)(1), and revising paragraphs (c)(7), (h)(2), (j)(2), and (j)(5) to read as follows:

**§ 430.3 Materials incorporated by reference.**

* * * * *

(c) * * *

(6) ANSI_IEC C78.81–2005, Revision of ANSI C78.81–2003 ("ANSI C78.81"), American National Standard for Electric Lamps—Double-Capped Fluorescent Lamps—Dimensional and Electrical

Characteristics, approved August 11, 2005; IBR approved for § 430.2 and Appendix R of subpart B.

(7) ANSI C78.375–1997, Revision of ANSI C78.375–1991 ("ANSI C78.375"), American National Standard for Fluorescent Lamps—Guide for Electrical Measurements, first edition, approved September 25, 1997; IBR approved for Appendix R to Subpart B.

(8) ANSI_IEC C78.901–2005, Revision of ANSI C78.901–2001 ("ANSI C78.901"), American National Standard for Electric Lamps—Single-Based Fluorescent Lamps—Dimensional and Electrical Characteristics, approved March 23, 2005; IBR approved for § 430.2 and Appendix R to Subpart B.

* * * * *

(12) ANSI C82.3–2002, Revision of ANSI C82.3–1983 (R 1995) ("ANSI C82.3"), American National Standard for Reference Ballasts for Fluorescent Lamps, approved September 4, 2002; IBR approved for Appendix R to Subpart B.

* * * * *

(h) * * *

(1) CIE 13.3–1995 ("CIE 13.3"), Technical Report: Method of Measuring and Specifying Colour Rendering Properties of Light Sources, 1995, ISBN 3 900 734 57 7; IBR approved for § 430.2 and Appendix R to Subpart B.

(2) CIE 15:2004 ("CIE 15"), Technical Report: Colorimetry, 3rd edition, 2004, ISBN 978 3 901906 33 6; IBR approved for Appendix R to Subpart B.

* * * * *

(j) * * *

(2) IESNA LM–9–99, ("LM–9"), IESNA Approved Method for the Electrical and Photometric Measurements of Fluorescent Lamps, 1999. IBR approved for § 430.2 and Appendix R to Subpart B.

* * * * *

(5) IESNA LM–45–00, ("LM–45"), IESNA Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps, approved May 8, 2000; IBR approved for Appendix R to Subpart B.

* * * * *

■ 4. Section 430.23 is amended by revising paragraph (r) to read as follows:

**§ 430.23 Test procedures for the measurement of energy and water consumption.**

* * * * *

(r) *General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.* (1) The estimated annual energy consumption for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps, expressed in kilowatt-hours per year, shall be the product of the input power in kilowatts as determined in accordance with section 4 of Appendix R to this subpart and an average annual use specified by the manufacturer, with the resulting product rounded off to the nearest kilowatt-hour per year. Manufacturers must provide a clear and accurate description of the assumptions used for the estimated annual energy consumption.

(2) The lamp efficacy for general service fluorescent lamps shall be equal to the average lumen output divided by the average lamp wattage as determined in section 4 of Appendix R of this subpart, with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(3) The lamp efficacy for general service incandescent lamps shall be equal to the average lumen output divided by the average lamp wattage as determined in section 4 of Appendix R of this subpart, with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(4) The lamp efficacy for incandescent reflector lamps shall be equal to the average lumen output divided by the average lamp wattage as determined in section 4 of Appendix R of this subpart, with the resulting quotient rounded off to the nearest tenth of a lumen per watt.

(5) The color rendering index of a general service fluorescent lamp shall be tested and determined in accordance with section 4.4 of Appendix R of this subpart and rounded off to the nearest unit.

* * * * *

■ 5. Section 430.24 is amended by revising paragraph (r)(1) to read as follows:

**§ 430.24 Units to be tested.**

* * * * *

(r)(1) For each basic model of general service fluorescent lamp, general service incandescent lamp, and incandescent reflector lamp, samples of production lamps shall be tested and the results for all samples shall be averaged for a 12-month period.

* * * * *

■ 6. Section 430.25 is revised to read as follows:

**§ 430.25 Laboratory Accreditation Program.**

The testing for general service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps shall be performed in accordance with Appendix R to this subpart. The testing for medium base compact fluorescent lamps shall be performed in accordance with Appendix W of this subpart. This testing shall be conducted by test laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) or by an accrediting organization recognized by NVLAP. NVLAP is a program of the National Institute of Standards and Technology, U.S. Department of Commerce. NVLAP standards for accreditation of laboratories that test for compliance with standards for lamp efficacy and CRI are set forth in 15 CFR part 285. A manufacturer's or importer's own laboratory, if accredited, may conduct the applicable testing.

■ 7. Appendix R to subpart B of part 430 is amended by:

■ a. Removing from paragraph 2.9 the words "and in IESNA LM–66 for medium base compact fluorescent lamps";

■ b. Removing paragraph 3.4;

■ c. Removing the words "(see 10 CFR 430.22)" and adding the words "(incorporated by reference; see § 430.3)" in its place in paragraphs 2.9, 3.1, 3.2, 3.3, 4.2.1, and 4.3.2;

■ d. Removing the words "(see § 430.22)" and adding the words "(incorporated by reference: see § 430.3)" in its place in paragraph 4.3.3; and

■ e. Revising the heading of Appendix R and paragraphs 1, 2.1, 2.6, 4.1, 4.2.2, and 4.4 to read as follow:

**Appendix R to Subpart B of Part 430—Uniform Test Method for Measuring Average Lamp Efficacy (LE), Color Rendering Index (CRI), and Correlated Color Temperature (CCT) of Electric Lamps**

1. *Scope:* This appendix applies to the measurement of lamp lumens, electrical characteristics, CRI, and CCT for general service fluorescent lamps, and to the measurement of lamp lumens, electrical characteristics for general service incandescent lamps and incandescent reflector lamps.

2. *Definitions*

2.1 To the extent that definitions in the referenced IESNA and CIE standards do not conflict with the DOE definitions, the definitions specified in section 1.2 of IESNA LM–9 (incorporated by reference; see § 430.3), section 3.0 of IESNA LM–20 (incorporated by reference; see § 430.3), section 1.2 and the Glossary of IESNA LM–45 (incorporated by reference; see § 430.3), section 2 of IESNA LM–58 (incorporated by reference; see § 430.3), and Appendix 1 of CIE 13.3 (incorporated by reference; see § 430.3) shall be included.

* * * * *

2.6 *Lamp efficacy* means the ratio of measured lamp lumen output in lumens to the measured lamp electrical power input in

watts, rounded to the nearest tenth, in units of lumens per watt.

* * * * *

4. *Test Methods and Measurements*

* * *

4.1 *General Service Fluorescent Lamps*

4.1.1 The measurement procedure shall be as described in IESNA LM–9 (incorporated by reference; see § 430.3), except that lamps shall be operated at the appropriate voltage and current conditions as described in ANSI C78.375 (incorporated by reference; see § 430.3) and in ANSI C78.81 (incorporated by reference; see § 430.3) or ANSI C78.901 (incorporated by reference; see § 430.3), and lamps shall be operated using the appropriate reference ballast at input voltage specified by the reference circuit as described in ANSI C82.3 (incorporated by reference; see § 430.3). If, for a lamp, both low-frequency and high-frequency reference ballast settings are included in ANSI C78.81 or ANSI C78.901, the lamp shall be operated using the low-frequency reference ballast.

4.1.2 For lamps not listed in ANSI C78.81 (incorporated by reference; see § 430.3) nor in ANSI C78.901 (incorporated by reference; see § 430.3), the lamp shall be operated using the following reference ballast settings:

4.1.2.1 4-Foot medium bi-pin lamps shall be operated using the following reference ballast settings: T10 or T12 lamps are to use 236 volts, 0.43 amps, and 439 ohms; T8 lamps are to use 300 volts, 0.265 amps, and 910 ohms.

4.1.2.2 2-Foot U-shaped lamps shall be operated using the following reference ballast settings: T12 lamps are to use 236 volts, 0.430 amps, and 439 ohms; T8 lamps are to use 300 volts, 0.265 amps, and 910 ohms.

4.1.3 Lamp lumen output (lumens) and lamp electrical power input (watts), at the reference condition, shall be measured and recorded. Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition.

*4.2 General Service Incandescent Lamps*

* * * * *

4.2.2 The test procedure shall conform with sections 5 and 9 of IESNA LM–45 (incorporated by reference; see § 430.3), and the lumen output of the lamp shall be determined in accordance with section 9 of IESNA LM–45. Lamp electrical power input in watts shall be measured and recorded. Lamp efficacy shall be determined by computing the ratio of the measured lamp lumen output and lamp electrical power input at equilibrium for the reference condition. The test report shall conform to section 11 of IESNA LM–45.

* * * * *

*4.4 Determination of Color Rendering Index and Correlated Color Temperature*

4.4.1 The CRI shall be determined in accordance with the method specified in CIE 13.3 (incorporated by reference; see § 430.3) for general service fluorescent lamps. The CCT shall be determined in accordance with the method specified in IESNA LM–9 (incorporated by reference; see § 430.3) and rounded to the nearest 10 kelvin for general service fluorescent lamps. The CCT shall be determined in accordance with the CIE 15 (incorporated by reference; see § 430.3) for incandescent lamps. The required spectroradiometric measurement and characterization shall be conducted in accordance with the methods set forth in IESNA LM–58 (incorporated by reference; see § 430.3).

4.4.2 The test report shall include a description of the test conditions, equipment, measured lamps, spectroradiometric measurement results, and CRI and CCT determinations.

* * * * *

■ 8. Section 430.62 is amended by revising paragraph (a)(4)(ix) to read as follows:

**§ 430.62 Submission of data**

(a) * * *

(4) * * *

(ix) General service fluorescent lamps, the testing laboratory's National Voluntary Laboratory Accreditation Program (NVLAP) identification number or other NVLAP-approved accreditation identification, production date codes (and accompanying decoding scheme), the 12-month average lamp efficacy in lumens per watt, lamp wattage, correlated color temperature, and the 12-month average Color Rendering Index.

* * * * *

[FR Doc. E9–15643 Filed 7–2–09; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 1 and 101

**[Docket No. FAA–2007–27390; Amendment Nos. 1–62 and 101–8]**

**RIN 2120–AI88**

## Requirements for Amateur Rocket Activities

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects errors in the FAA regulations regarding amateur rockets. A section concerning unmanned rocket activities was inadvertently placed in the subpart for unmanned balloon activities. This correction moves that section to the correct subpart, so all the information relating to unmanned rocket activities will appear in the same subpart. Additionally, we are making minor editorial corrections.

**DATES:** This amendment is effective July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule contact Charles P. Brinkman, Licensing and Safety Division (AST–200), Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–7715, e-mail *Phil.Brinkman@faa.gov*. For legal questions concerning this final rule contact Gary Michel, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591, telephone (202) 267–3148.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 4, 2008 (73 FR 73768), the FAA published the final rule "Requirements for Amateur Rocket Activities." A new § 101.29 was added in the final rule. However, the section was inadvertently added to Subpart D—Unmanned Free Balloons. It should have been added to Subpart C—Unmanned Rockets, since the new section concerns amateur rocket activities, not balloon activities. Moving § 101.29 to the correct subpart will make it easier for readers to find all the information relating to unmanned rockets in one place. In § 1.1, paragraph (2) of the definition for Amateur Rockets, the word "statue" is changed to "statute". In the first line of § 101.25(b)(5), the number "8" (kilometers) is changed to "9.26" to correct the metric conversion when the word "statute" is replaced with the word "nautical". Lastly, in the second line of § 101.27(c), the word "statute" is again replaced with the word "nautical".

### Technical Correction

This technical correction merely moves an existing section to the correct subpart and ensures correct spelling and placement of miscellaneous words. There are no other changes to the existing regulatory text.

### Justification for Immediate Adoption

Because this action moves an existing section to an existing subpart, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. 553(d) for making this rule effective upon publication.

### List of Subjects for Parts 1 and 101

Aircraft, Aviation safety.

**The Amendment**

■ In consideration of the foregoing, the FAA amends 14 CFR parts 1 and 101, as follows:

## PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

**§ 1.1 [Amended]**

■ 2. Amend § 1.1 by correcting paragraph (2) of the definition of "Amateur rocket" by removing the word "statue" and adding the word "statute" in its place.

## PART 101—MOORED BALLOONS, KITES, UNMANNED ROCKETS AND UNMANNED FREE BALLOONS

■ 3. The authority citation for part 101 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308.

**§ 101.25 [Amended]**

■ 4. Amend § 101.25 by correcting paragraph (b)(5) by removing the number "8" and adding the number "9.26" in its place and removing the word "statute" and adding the word "nautical" in its place.

**§ 101.27 [Amended]**

■ 5. Amend § 101.27 by correcting paragraph (c) by removing the word "statute" and adding the word "nautical" in its place.

**§ 101.29 [Transferred]**

■ 6. Transfer § 101.29 from Subpart D into Subpart C of part 101.

Issued in Washington, DC, on June 30, 2009.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E9–15821 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2009–0089; Airspace Docket No. 09–ASW–4]**

## Amendment of Class E Airspace; Devine, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Devine, TX. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Devine Municipal Airport, Devine, TX. This action also corrects a typographical error in the legal description of the airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Devine Municipal Airport.

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

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

**SUPPLEMENTARY INFORMATION:**

**History**

On April 20, 2009, the FAA published in the **Federal Register** a NPRM to amend Class E airspace at Devine, TX, adding additional controlled airspace at Devine Municipal Airport, Devine, TX. (74 FR 17912, Docket No. FAA–2009–0089). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. This action also corrects a typographical error in the legal description, changing the 6.5-mile radius to a 6.3-mile radius. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Devine, TX, adding additional controlled airspace extending upward from 700 feet above the surface at Devine Municipal Airport, Devine, TX, for the safety and management of IFR operations. This action also changes the 6.5-mile radius to a 6.3-mile radius in the legal description for Devine Municipal Airport.

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

October 31, 2008, is amended as follows:

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

* * * * *

**ASW TX E5 Devine, TX [Amended]**

Devine Municipal Airport, TX
(Lat. 29°08′18″ N., long. 98°56′31″ W.)
Devine RBN
(Lat. 29°08′18″ N., long. 98°56′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Devine Municipal Airport and within 4 miles each side of the 173° bearing from the airport extending from the 6.3-mile radius to 10.5 miles south of the airport, and within 2.6 miles each side of the 183° bearing from the Devine RBN extending from the 6.3-mile radius to 16 miles south of the RBN.

* * * * *

Issued in Fort Worth, Texas, on June 24, 2009.

**Roger M. Trevino,**

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

[FR Doc. E9–15696 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2009–0188; Airspace Docket No. 09–AGL–5]**

## Amendment of Class E Airspace; Port Clinton, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Port Clinton, OH. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Carl R. Keller Field Airport, Port Clinton, OH. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Carl R. Keller Field Airport.

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

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

**SUPPLEMENTARY INFORMATION:**

### History

On April 21, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Port Clinton, OH, adding additional controlled airspace at Carl R. Keller Field Airport, Port Clinton, OH. (74 FR 18166, Docket No. FAA–2009–0188). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface at Port Clinton, OH, adding additional controlled airspace at Carl R. Keller Field Airport, Port Clinton, OH, for the safety and management of IFR operations.

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

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

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

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

### §71.1 [Amended]

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

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

* * * * *

**AGL OH E5 Port Clinton, OH [Amended]**

Port Clinton, Carl R. Keller Field Airport, OH
(Lat. 41°30′59″ N., long. 82°52′07″ W.)
Magruder Memorial Hospital, OH—Point in Space Coordinates
(Lat. 41°29′43″ N., long. 82°55′50″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Carl R. Keller Field Airport and within 4 miles each side of the 083° bearing from the airport extending from the 7-mile radius to 9.4 miles east of the airport and within a 6-mile radius of the Point in Space serving Magruder Memorial Hospital.

* * * * *

Issued in Fort Worth, Texas, on June 24, 2009.

**Roger M. Trevino,**

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

[FR Doc. E9–15697 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0926; Airspace Docket No. 08–AAL–24]

RIN 2120–AA66

## Establishment, Revision, and Removal of Area Navigation (RNAV) Routes; Alaska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes twenty two Area Navigation (RNAV) routes, and revises fourteen RNAV routes, in the State of Alaska. Additionally, this action removes four existing routes that are no longer required. Q & T-routes are Air Traffic Service (ATS) routes, based on RNAV, for use by aircraft having instrument flight rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The FAA is taking this action to enhance safety and to improve the efficient use of the navigable airspace in Alaska.

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

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

**SUPPLEMENTARY INFORMATION:**

### Background

On February 12, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish twenty three RNAV routes, and revise fourteen RNAV routes, in the State of Alaska. Additionally, this action proposed to remove four existing routes that are no longer required (74 FR 7012). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal. Two comments were received in response to the NPRM.

The first commenter proposed to amend the T–252 between Nome and Kotzebue. The commenter suggested moving the route to the East to stay closer to land. Moving the proposed T–252 closer to the shoreline would delay establishing a route that traverses Norton Sound until 2010. As a result, the FAA has decided to establish T–252 as proposed, and during the 2010 route development cycle, the FAA will evaluate establishing a route closer to the shoreline as suggested.

The second comment concerned the Prince William Sound region and access to the Alaskan Native villages of Tatitlek and Chenega Bay. In order to accommodate this suggestion, the FAA would have to make the routes four miles wide instead of eight miles in order to achieve an MEA advantage over conventional routing in the area. This would make the routes restricted from public use. While this does not prevent the suggestion from being evaluated for feasibility, development of special RNAV routes falls outside the scope of this project. The FAA will consider this suggestion in future airway work.

During the comment period, the FAA conducted flight inspections of the proposed routes and reviewed the results to evaluate the safety and efficiency of the proposed T route structure. Based on the results of the inspections, and on further refinements to the route designs, the FAA determined that changes are required to the description of one route and the elimination of one route proposed in the NPRM.

A minor change will be made to T–231 by adding a new point (Selawik) between Fairbanks and Kotzebue. This change will realign the route southward to pass over the Selawik VORTAC. This change will cause the route to more closely match current air traffic procedures. Additionally, proposed route T–271 will be eliminated from this rulemaking action since the FAA was unable to complete a flight inspection on T–271. Therefore, the FAA has decided not to implement T–271. With the exception of the changes described above, this amendment is the same as that proposed in the NPRM.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing fourteen high altitude RNAV routes, and eight low altitude RNAV routes, in the State of Alaska. Additionally, this action revises one high altitude route, thirteen low altitude routes, and removes four existing "T" routes that are no longer required. These changes will enhance safety, and facilitate the more flexible and efficient use of the navigable airspace for en route IFR operations within the State of Alaska. This action will improve operator efficiency, access and safety, while incrementally reducing dependency on ground based navigation facilities.

The High Altitude RNAV Q–Routes are published in paragraph 2006, and the Low Altitude RNAV T–Routes are published in paragraph 6011 in FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The airspace designations listed in this document would be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it proposes to create Class A and E airspace sufficient in size to contain aircraft using the described Federal Airways within the State of Alaska and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. This airspace action is not expected to cause any potentially

significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 2006 United States Area Navigation Routes.*

* * * * *

| | | |
|---|---|---|
| **Q–41 CAWIN to SCC [New]** | | |
| CAWIN | Fix | (Lat. 63°16′51″ N., long. 148°59′18″ W.) |
| SCC | VOR/DME | (Lat. 70°11′57″ N., long. 148°24′58″ W.) |
| **Q–43 ANC to FAI [New]** | | |
| ANC | VOR/DME | (Lat. 61°09′03″ N., long. 150°12′24″ W.) |
| CAWIN | Fix | (Lat. 61°16′51″ N., long. 148°59′18″ W.) |
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |
| **Q–44 OME to ANC [New]** | | |
| OME | VOR/DME | (Lat. 64°29′06″ N., long. 165°15′11″ W.) |
| ANC | VOR/DME | (Lat. 61°09′03″ N., long. 150°12′24″ W.) |
| **Q–45 DLG to AMOTT [New]** | | |
| DLG | VOR/DME | (Lat. 58°59′39″ N., long. 158°33′08″ W.) |
| AMOTT | Fix | (Lat. 60°53′56″ N., long. 151°21′46″ W.) |
| **Q–46 PHO to BRW [New]** | | |
| PHO | NDB | (Lat. 68°20′41″ N., long. 166°47′51″ W.) |
| BRW | VOR/DME | (Lat. 71°16′24″ N., long. 156°47′17″ W.) |
| **Q–47 AKN to AMOTT [New]** | | |
| AKN | VORTAC | (Lat. 58°43′29″ N., long. 156°45′08″ W.) |
| AMOTT | Fix | (Lat. 60°53′56″ N., long. 151°21′46″ W.) |
| **Q–48 BRW to ROCES [New]** | | |
| BRW | VOR/DME | (Lat. 71°16′24″ N., long. 156°47′17″ W.) |
| SCC | VOR/DME | (Lat. 70°11′57″ N., long. 148°24′58″ W.) |
| ROCES | WP | (Lat. 70°08′34″ N., long. 143°08′16″ W.) |
| * * | * * | * * * |
| **Q–49 ODK to AMOTT [New]** | | |
| ODK | VOR/DME | (Lat. 57°46′30″ N., long. 152°20′23″ W.) |
| AMOTT | Fix | (Lat. 60°53′56″ N., long. 151°21′46″ W.) |
| **Q–51 AKN to OTZ [New]** | | |
| AKN | VORTAC | (Lat. 58°43′29″ N., long. 156°45′08″ W.) |
| OTZ | VOR/DME | (Lat. 66°53′09″ N., long. 162°32′24″ W.) |
| **Q–53 ODK to OTZ [New]** | | |
| ODK | VOR/DME | (Lat. 57°46′30″ N., long. 152°20′23″ W.) |
| ILI | NDB/DME | (Lat. 59°44′53″ N., long. 154°54′35″ W.) |
| OTZ | VOR/DME | (Lat. 66°53′09″ N., long. 162°32′24″ W.) |
| **Q–55 ODK to OME [New]** | | |
| ODK | VOR/DME | (Lat. 57°46′30″ N., long. 152°20′23″ W.) |
| OME | VOR/DME | (Lat. 64°29′06″ N., long. 165°15′11″ W.) |
| **Q–57 AKN to MCG [New]** | | |
| AKN | VORTAC | (Lat. 58°43′29″ N., long. 156°45′08″ W.) |
| MCG | VORTAC | (Lat. 62°57′04″ N., long. 155°36′41″ W.) |
| **Q–59 CDB to BET [New]** | | |
| CDB | VORTAC | (Lat. 55°16′03″ N., long. 162°46′27″ W.) |
| BET | VORTAC | (Lat. 60°47′05″ N., long. 161°49′28″ W.) |
| **Q–61 FAI to BRW [New]** | | |
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |
| BRW | VOR/DME | (Lat. 71°16′24″ N., long. 156°47′17″ W.) |
| * * | * * | * * * |
| **Q–16 ODK to YAK [Revised]** | | |
| ODK | VOR/DME | (Lat. 57°46′30″ N., long. 152°20′23″ W.) |
| MDO | VOR/DME | (Lat. 59°25′19″ N., long. 146°21′00″ W.) |
| YAK | VOR/DME | (Lat. 59°30′39″ N., long. 139°38′53″ W.) |

* * * * *

*Paragraph 6011. United States Area Navigation Routes.*

* * * * *

**T–269 BET to ANN [New]**

| | | |
|---|---|---|
| BET | VORTAC | (Lat. 60°47′05″ N., long. 161°49′28″ W.) |
| SQA | VOR/DME | (Lat. 61°05′55″ N., long. 155°38′04″ W.) |
| ANC | VOR/DME | (Lat. 61°09′03″ N., long. 150°12′24″ W.) |
| JOH | VOR/DME | (Lat. 60°28′51″ N., long. 146°35′58″ W.) |
| YAK | VOR/DME | (Lat. 59°30′39″ N., long. 139°38′53″ W.) |
| BKA | VORTAC | (Lat. 56°51′34″ N., long. 135°33′05″ W.) |
| ANN | VOR/DME | (Lat. 55°03′37″ N., long. 131°34′42″ W.) |

* * * * * * *

**T–273 FAI to ROCES [New]**

| | | |
|---|---|---|
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |
| ROCES | WP | (Lat. 70°08′34″ N., long. 144°08′16″ W.) |

* * * * * * *

**T–275 BET to UNK [New]**

| | | |
|---|---|---|
| BET | VORTAC | (Lat. 60°47′05″ N., long. 161°49′28″ W.) |
| UNK | VOR/DME | (Lat. 63°53′31″ N., long. 160°41′04″ W.) |

* * * * * * *

**T–277 BTT to PIZ [New]**

| | | |
|---|---|---|
| BTT | VOR/DME | (Lat. 66°54′18″ N., long. 151°32′09″ W.) |
| PIZ | NDB | (Lat. 69°44′04″ N., long. 163°44′49″ W.) |

**T–278 HAPIT to SSR [New]**

| | | |
|---|---|---|
| HAPIT | Fix | (Lat. 58°11′58″ N., long. 137°31′12″ W.) |
| SSR | VORTAC | (Lat. 58°10′40″ N., long. 135°15′32″ W.) |

**T–279 ALEUT to BET [New]**

| | | |
|---|---|---|
| ALEUT | Fix | (Lat. 54°14′17″ N., long. 166°32′52″ W.) |
| BET | VORTAC | (Lat. 60°47′05″ N., long. 161°49′28″ W.) |

**T–280 FLIPS to LVD [New]**

| | | |
|---|---|---|
| FLIPS | Fix | (Lat. 56°34′33″ N., long. 134°52′47″ W.) |
| LVD | VOR/DME | (Lat. 56°28′04″ N., long. 133°04′59″ W.) |

* * * * * * *

**T–282 VENCE to FAI [New]**

| | | |
|---|---|---|
| VENCE | Fix | (Lat. 64°29′23″ N., long. 158°00′06″ W.) |
| HORSI | Fix | (Lat. 64°44′05″ N., long. 154°19′15″ W.) |
| ROSII | Fix | (Lat. 64°57′46″ N., long. 153°14′37″ W.) |
| PERZO | WP | (Lat. 64°40′23″ N., long. 148°07′20″ W.) |
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |

* * * * * * *

**T–219 AIX to DLG [Revised]**

| | | |
|---|---|---|
| AIX | NDB/DME | (Lat. 60°23′06″ N., long. 166°12′53″ W.) |
| RUFVY | WP | (Lat. 59°56′34″ N., long. 164°02′04″ W.) |
| DLG | VOR/DME | (Lat. 58°59′39″ N., long. 158°33′08″ W.) |

* * * * * * *

**T–222 BAERE TO FAI [Revised]**

| | | |
|---|---|---|
| BAERE | WP | (Lat. 52°12′12″ N., long. 176°08′09″ W.) |
| SPY | NDB/DME | (Lat. 57°09′28″ N., long. 170°13′51″ W.) |
| RUFVY | WP | (Lat. 59°56′34″ N., long. 164°02′04″ W.) |
| BET | VORTAC | (Lat. 60°47′05″ N., long. 161°49′28″ W.) |
| MCG | VORTAC | (Lat. 62°57′04″ N., long. 155°36′41″ W.) |
| ENN | VORTAC | (Lat. 64°35′24″ N., long. 149°04′22″ W.) |
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |

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**T–223 EHM to AMOTT [Revised]**

| | | |
|---|---|---|
| EHM | NDB/DME | (Lat. 58°39′24″ N., long. 162°04′17″ W.) |
| DLG | VOR/DME | (Lat. 58°59′39″ N., long. 158°33′08″ W.) |
| FAGIN | Fix | (Lat. 59°51′56″ N., long. 155°32′43″ W.) |
| NONDA | Fix | (Lat. 60°19′16″ N., long. 153°47′58″ W.) |
| BLUGA | Fix | (Lat. 60°46′22″ N., long. 151°55′07″ W.) |

| | | |
|---|---|---|
| AMOTT | Fix | (Lat. 60°53′56″ N., long. 151°21′46″ W.) |

* * * * * * *

**T–227 SYA to SCC [Revised]**

| | | |
|---|---|---|
| SYA | VORTAC | (Lat. 52°43′06″ N., long. 174°03′44″ E.) |
| JANNT | WP | (Lat. 52°04′18″ N., long. 178°15′37″ W.) |
| BAERE | WP | (Lat. 52°12′12″ N., long. 176°08′09″ W.) |
| ALEUT | Fix | (Lat. 54°14′17″ N., long. 166°32′52″ W.) |
| MORDI | Fix | (Lat. 54°52′50″ N., long. 165°03′15″ W.) |
| GENFU | Fix | (Lat. 55°23′18″ N., long. 163°06′21″ W.) |
| BINAL | Fix | (Lat. 55°46′00″ N., long. 161°59′56″ W.) |
| PDN | NDB/DM | (Lat. 56°57′15″ N., long. 158°38′51″ W.) |
| AMOTT | Fix | (Lat. 60°53′56″ N., long. 151°21′46″ W.) |
| ANC | VOR/DME | (Lat. 61°09′03″ N., long. 150°12′24″ W.) |
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |
| SCC | VOR/DME | (Lat. 70°11′57″ N., long. 148°24′58″ W.) |

**T–228 EHM to ROCES [Revised]**

| | | |
|---|---|---|
| ENM | VOR/DME | (Lat. 62°47′05″ N., long. 164°29′15″ W.) |
| RUFVY | WP | (Lat. 59°56′34″ N., long. 164°02′04″ W.) |
| HPB | VOR/DME | (Lat. 61°30′52″ N., long. 166°08′04″ W.) |
| OME | VOR/DME | (Lat. 64°29′06″ N., long. 165°15′11″ W.) |
| HIKAX | WP | (Lat. 65°36′20″ N., long. 165°44′44″ W.) |
| SHH | NDB | (Lat. 66°15′29″ N., long. 166°03′09″ W.) |
| ECIPI | Fix | (Lat. 67°55′48″ N., long. 165°29′58″ W.) |
| BRW | VOR/DME | (Lat. 71°16′24″ N., long. 156°47′17″ W.) |
| SCC | VOR/DME | (Lat. 70°11′57″ N., long. 148°24′58″ W.) |
| ROCES | WP | (Lat. 70°08′34″ N., long. 144°08′16″ W.) |

* * * * * * *

**T–231 FAI to OTZ [Revised]**

| | | |
|---|---|---|
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |
| WLK | VOR/DME | (Lat. 66°35′58″ N., long. 159°59′27″ W.) |
| OTZ | VOR/DME | (Lat. 66°53′09″ N., long. 162°32′24″ W.) |

**T–232 BRW to ORT [Revised]**

| | | |
|---|---|---|
| BRW | VOR/DME | (Lat. 71°16′24″ N., long. 156°47′17″ W.) |
| BRONX | Fix | (Lat. 70°04′02″ N., long. 155°06′35″ W.) |
| BTT | VOR/DME | (Lat. 66°54′18″ N., long. 151°32′09″ W.) |
| FAI | VORTAC | (Lat. 64°48′00″ N., long. 148°00′43″ W.) |
| BIG | VORTAC | (Lat. 64°00′16″ N., long. 145°43′02″ W.) |
| ORT | VORTAC | (Lat. 62°56′50″ N., long. 141°54′46″ W.) |

* * * * * * *

**T–240 BTT to SCC [Revised]**

| | | |
|---|---|---|
| BTT | VOR/DME | (Lat. 66°54′18″ N., long. 151°32′09″ W.) |
| NAMRE | WP | (Lat. 69°06′29″ N., long. 149°34′00″ W.) |
| SCC | VOR/DME | (Lat. 70°11′57″ N., long. 148°24′58″ W.) |

* * * * * * *

**T–246 BRW to ANC [Revised]**

| | | |
|---|---|---|
| BRW | VOR/DME | (Lat. 71°16′24″ N., long. 156°47′17″ W.) |
| GAL | VOR/DME | (Lat. 64°44′17″ N., long. 156°46′38″ W.) |
| MCG | VORTAC | (Lat. 62°57′04″ N., long. 155°36′41″ W.) |
| ANC | VOR/DME | (Lat. 61°09′03″ N., long. 150°12′24″ W.) |

* * * * * * *

**T–248 GAM to ENM [Revised]**

| | | |
|---|---|---|
| GAM | NDB/DME | (Lat. 63°46′55″ N., long. 171°44′12″ W.) |
| QAYAQ | WP | (Lat. 63°52′14″ N., long. 169°59′42″ W.) |
| ENM | VOR/DME | (Lat. 62°47′05″ N., long. 164°29′15″ W.) |

* * * * * * *

**T–250 ULL to BET [Revised]**

| | | |
|---|---|---|
| ULL | VOR/DME | (Lat. 63°41′32″ N., long. 170°28′12″ W.) |
| QAYAQ | WP | (Lat. 63°52′14″ N., long. 169°59′42″ W.) |
| BANAT | WP | (Lat. 62°12′49″ N., long. 165°40′01″ W.) |
| BET | VORTAC | (Lat. 60°47′05″ N., long. 161°49′28″ W.) |

* * * * * * *

**T–252 OME to SCC [Revised]**

| | | |
|---|---|---|
| OME | VOR/DME | (Lat. 64°29′06″ N., long. 165°15′11″ W.) |
| OTZ | VOR/DME | (Lat. 66°53′09″ N., long. 162°32′24″ W.) |
| SCC | VOR/DME | (Lat. 70°11′57″ N., long. 148°24′58″ W.) |

* * * * * * *

**T–260 PHO to OME [Revised]**

| | | |
|---|---|---|
| PHO | NDB | (Lat. 68°20′41″ N., long. 166°47′51″ W.) |
| COGNU | WP | (Lat. 65°48′29″ N., long. 167°50′06″ W.) |
| TNC | NDB/DME | (Lat. 65°33′43″ N., long. 167°55′27″ W.) |
| OME | VOR/DME | (Lat. 64°29′06″ N., long. 165°15′11″ W.) |

* * * * * * *

**T–239 GAM to ULL [Remove]**

* * * * * * *

**T–256 GAL to BRW [Remove]**

* * * * * * *

**T–258 SHH to PHO [Remove]**

* * * * * * *

**T–268 FPN to ICK [Remove]**

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Issued in Washington, DC, on June 26, 2009.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E9–15695 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2008–0940; Airspace Docket No. 08–AAL–25]**

**RIN 2120–AA66**

## Removal and Modification of VOR Federal Airways; Alaska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action removes Federal Airway V–328, and modifies three Federal Airways, V–319, V–333 and V–480, in Alaska. This action revises the Instrument Flight Rules (IFR) airway and route structure in Alaska to account for the pending decommissioning from the National Airspace System (NAS) of the Kipnuk Very High Omni-directional Range (VOR), at Kipnuk, AK. The FAA is taking this action to enhance safety and improve the management of air traffic operations in the State of Alaska.

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

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

**SUPPLEMENTARY INFORMATION:**

### History

On December 10, 2008, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to remove V–328 and modify V–319, V–333 and V–480 (73 FR 75013). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal. No comments were received in response to the NPRM.

VOR Federal Airways are published in paragraph 6010(b) of FAA Order 7400.9S, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airways listed in this document will be published subsequently in the Order.

### The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR part 71) by revoking one Federal Airway V–328, and modifying three Federal Airways, V–319, V–333, and V–480 in Alaska. The FAA is taking this action to remove all airways off the Kipnuk, Very High Omni-directional Range (VOR), Kipnuk, AK, in preparation for the VOR's eventual decommissioning from the National Airspace System (NAS). The Kipnuk VOR decommissioning proposal was publicly advertised in non-rulemaking notice numbers 02–AAL–31NR and 06–AAL–32NR. After reviewing public comment, the FAA decided that keeping or moving the Kipnuk VOR was not feasible and should be decommissioned. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6010(b) Alaskan VOR Federal Airways.*

* * * * *

**V–319 [Revised]**

From Yakutat, AK, via Johnstone Point, AK, INT Johnstone Point 286° and Anchorage, AK, 117° radials; Anchorage, AK; Sparrevohn, AK; Bethel, AK; Hooper Bay, AK; to Nanwak, AK NDB.

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**V–333 [Revised]**

From Hooper Bay, AK; Nome, AK; to Shishmaref, AK.

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**V–328 [Removed]**

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**V–480 [Revised]**

From Mt. Moffett, AK, NDB, 20 AGL via St. Paul Island, AK, NDB, 20 AGL; Bethel, AK; McGrath, AK; Nenana, AK; to Fairbanks, AK.

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Issued in Washington, DC, on June 26, 2009.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E9–15694 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 742, 745, and 774**

**[Docket No. 090113021–9025–01]**

**RIN 0694–AE55**

## Implementation of the 2008 Australia Group (AG) Intersessional Decisions; Additions to the List of States Parties to the Chemical Weapons Convention (CWC)

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

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the 2008 Australia Group (AG) intersessional decisions, which were recommended at the Intersessional Implementation Meeting held at The Hague on October 8–9. 2008, and adopted under the AG intersessional silent approval procedures in December 2008. This final rule amends the EAR to reflect changes to the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software" affecting valves and toxic gas monitoring systems. Consistent with these changes, this rule expands the EAR controls on valves to include those having contact surfaces lined with certain ceramic materials. In addition, this rule clarifies the types of dedicated detecting components that are subject to the EAR controls on toxic gas monitoring systems and expands these controls to include dedicated software for such systems.

This rule also amends the EAR to reflect changes to the AG "Control List of Dual-Use Biological Equipment and Related Technology and Software" affecting cross (tangential) flow filtration equipment. Consistent with these changes, the rule clarifies the EAR controls on such equipment to specifically identify equipment using disposable or single-use filtration components.

In addition, this rule amends the EAR to reflect changes to the AG "Guidelines for Transfers of Sensitive Chemical or Biological Items." Consistent with these changes, the rule amends the AG-related software entries in the EAR to include references to several definitions that were recently added to the AG "Guidelines."

Finally, this rule amends the list of countries that currently are States Parties to the CWC by adding "Bahamas," "Dominican Republic," "Iraq," and "Lebanon," which recently became States Parties. As a result of this change, the CW (Chemical Weapons) license requirements and policies in the EAR that apply to these countries now conform with those applicable to other CWC States Parties. However, because of the special EAR controls that apply to Iraq, items controlled under the EAR for CW reasons continue to require a license for export or reexport to Iraq, or for transfer within Iraq.

**DATES:** This rule is effective July 6, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**ADDRESSES:** You may submit comments, identified by RIN 0694–AE55, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *publiccomments@bis.doc.gov*. Include "RIN 0694–AE55" in the subject line of the message.
- Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AE55.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694–AE55)—all comments on the latter should be submitted by one of the four methods outlined above.

**FOR FURTHER INFORMATION CONTACT:** Theodore Curtin, Export Policy Analyst, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–1975.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the 2008 Australia Group (AG) intersessional decisions, which were recommended at the Intersessional Implementation Meeting held at The Hague on October 8–9, 2008, and adopted under the AG intersessional silent approval procedures in December 2008. The AG is a multilateral forum, consisting of 40 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The 2008 AG intersessional decisions included changes to the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software" affecting valves and toxic gas monitoring systems. Consistent with these changes, this rule amends Export Control Classification Number (ECCN) 2B350 on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) by revising the controls on valves described in ECCN 2B350.g to include any such valves (including casings or preformed casing liners designed for such valves) that are made from any of the following ceramic materials:

(1) Silicon carbide with a purity of 80% or more by weight; (2) aluminum oxide (alumina) with a purity of 99.9% or more by weight; or (3) zirconium oxide (zirconia).

This rule also amends ECCN 2B351 on the CCL, which controls certain toxic gas monitoring systems, to specify the types of dedicated detecting components therefor that are controlled under this ECCN (i.e., detectors, sensor devices, and replaceable sensor cartridges). In addition, this rule adds a new ECCN 2D351 to control dedicated software for toxic gas monitoring systems and their dedicated detecting components controlled under ECCN 2B351. Software controlled under this new ECCN requires a license for destinations indicated under CB Column 2 and/or AT Column 1 on the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). The rule also makes two related conforming changes by: (1) Amending ECCN 2E001 (technology for the "development" of most 2A, 2B, or 2D items) to add a reference to new ECCN 2D351 under the CB controls paragraph in the License Requirements section of the ECCN and (2) adding a reference to new ECCN 2D351 in Section 742.2(a)(2) of the EAR, which identifies those items that require a license to destinations indicated under CB Column 2 on the Commerce Country Chart.

The 2008 AG intersessional decisions also included changes to the AG "Control List of Dual-Use Biological Equipment and Related Technology and Software" affecting cross (tangential) flow filtration equipment. Consistent with these changes, the rule amends ECCN 2B352 on the CCL by revising the controls on cross (tangential) flow filtration equipment described in ECCN 2B352.d to specifically identify any such equipment using disposable or single-use filtration components as subject to control.

In addition, the 2008 AG intersessional decisions included changes to the AG "Guidelines for Transfers of Sensitive Chemical or Biological Items." As a result of these decisions, the AG "Guidelines" were revised to include definitions for "software," "program," and "microprogram," as well as language indicating that software identified on the AG Common Control Lists does not include mass market software, i.e., software that: (i) Is generally available to the public by being sold from stock at retail selling points, without restriction, by means of over-the-counter transactions, mail order transactions, electronic transactions, or telephone call transactions and (ii) is designed for installation by the user without further substantial support by the supplier.

Since the three definitions that were added to the AG "Guidelines" are currently found in Section 772.1 of the EAR, this rule simply adds a reference to the definitions in the "Related Definitions" paragraph for ECCN 1D390[1] on the CCL, which controls "software" for process control that is specifically configured to control or initiate "production" of chemicals controlled by 1C350, and new ECCN 2D351, which controls dedicated software for toxic gas monitoring systems and their dedicated components controlled under ECCN 2B351. This rule does not include in either of these two ECCNs a mass market software exclusion, as described in the AG "Guidelines," because the General Technology Note (Note 2) in Supplement No. 2 to Part 774 of the EAR contains an identical mass market software exclusion, which is available for all software on the CCL (except encryption software controlled for "EI" reasons) under License Exception TSU, and which applies to all destinations, except those identified in Country Group E:1. Note that software that is eligible for the mass market exemption under License Exception TSU is distinct from publicly available software described in Section 734.3(b)(3) of the EAR, since the latter is not subject to the EAR while the former continues to be subject to the EAR.

Finally, this rule amends Supplement No. 2 to Part 745 of the EAR (titled "States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction") by adding "Bahamas," "Dominican Republic," "Iraq," and "Lebanon," which became States Parties to the CWC on May 21, 2009, April 26, 2009, February 12, 2009, and December 20, 2008, respectively. As a result of this change, the CW (Chemical Weapons) license requirements and policies that apply to these countries now conform with those applicable to other CWC States Parties, as described in Section 742.18 of the EAR. However, items controlled for CW reasons under the EAR continue to require a license for export or reexport to Iraq, or for transfer within Iraq, in accordance with the licensing policy for Iraq described in Section 746.3(a) of the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

**Saving Clause**

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator "NLR") as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on August 5, 2009, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before *August*

[1] Process control software in ECCN 1D390 is not included on the AG "Control List of Dual-Use Chemical Manufacturing Facilities and Equipment and Related Technology and Software." However, BIS controls such software consistent with the chemical/biological (CB) controls described in Section 742.2(a)(2) of the EAR.

*20, 2009.* Any such items not actually exported or reexported before midnight, on *August 20, 2009,* require a license in accordance with this regulation.

"Deemed" exports of "technology" and "source code" removed from eligibility for export under a license exception or without a license (under the designator "NLR") as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before August 20, 2009. Beginning at midnight on August 20, 2009, such "technology" and "source code" may no longer be released, without a license, to a foreign national subject to the "deemed" export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

**Rulemaking Requirements**

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

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

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

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

**List of Subjects**

*15 CFR Part 742*

Exports, Foreign trade.

*15 CFR Part 745*

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 774*

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, Parts 742, 745, and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

**PART 742—[AMENDED]**

■ 1. The authority citation for 15 CFR part 742 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. Section 742.2 is amended by redesignating paragraphs (a)(2)(viii) and (a)(2)(ix) as paragraphs (a)(2)(x) and (a)(2)(xi) and by adding new paragraphs (a)(2)(viii) and (a)(2)(ix) to read as follows:

**§ 742.2 Proliferation of chemical and biological weapons.**

(a) * * *

(2) * * *

(viii) Dedicated software identified in ECCN 2D351 for the "use" of toxic gas monitoring systems and their dedicated detecting components controlled by ECCN 2B351.

(ix) Technology identified in ECCN 2E001 for the "development" of software controlled by ECCN 2D351.

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**PART 745—[AMENDED]**

■ 3. The authority citation for 15 CFR part 745 continues to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

**Supplement No. 2 to Part 745—[Amended]**

■ 4. Supplement No. 2 to Part 745 is amended:

■ a. By revising the undesignated center heading "List of States Parties as of July 1, 2008" to read "List of States Parties as of May 21, 2009"; and

■ b. By adding, in alphabetical order, the countries "Bahamas", "Dominican Republic", "Iraq", and "Lebanon".

**PART 774—[AMENDED]**

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

**Supplement No. 1 to Part 774—[Amended]**

■ 6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms" & "Toxins," ECCN 1D390 is amended by revising the "Related Definitions" paragraph, under the List of Items Controlled, to read as follows:

**1D390 "Software" for process control that is specifically configured to control or initiate "production" of chemicals controlled by 1C350.**

* * * * *

**List of Items Controlled**

*Unit:* * * *

*Related Controls:* * * *

*Related Definitions:* See Section 772.1 of the EAR for the definitions of "software," "program," and "microprogram."

*Items:* * * *

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising paragraph (g) under "Items" in the List of Items Controlled to read as follows:

**2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* * * *
*Related Controls:* * * *
*Related Definitions:* * * *
*Items:*

* * * * *

g. Valves with nominal sizes greater than 1.0 cm (3/8 in.), and casings (valve bodies) or preformed casing liners designed for such valves, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

g.1. Alloys with more than 25% nickel and 20% chromium by weight;

g.2. Nickel or alloys with more than 40% nickel by weight;

g.3. Fluoropolymers;

g.4. Glass or glass lined (including vitrified or enameled coatings);

g.5. Tantalum or tantalum alloys;

g.6. Titanium or titanium alloys;

g.7. Zirconium or zirconium alloys;

g.8. Niobium (columbium) or niobium alloys; or

g.9. Ceramic materials, as follows:

g.9.a. Silicon carbide with a purity of 80% or more by weight;

g.9.b. Aluminum oxide (alumina) with a purity of 99.9% or more by weight; or

g.9.c. Zirconium oxide (zirconia).

* * * * *

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B351 is amended by revising the ECCN heading and by revising the "Related Controls" and "Related Definitions" paragraphs, under the List of Items Controlled, to read as follows:

**2B351 Toxic gas monitoring systems and their dedicated detecting components (i.e., detectors, sensor devices, and replaceable sensor cartridges), as follows, except those systems and detectors controlled by ECCN 1A004.c (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* * * *

*Related Controls:* See ECCN 2D351 for "software" for toxic gas monitoring systems and their dedicated detecting components controlled by this ECCN. Also see ECCN 1A004, which controls chemical detection systems and specially designed components therefor that are specially designed or modified for detection or identification of chemical warfare agents, but not specially designed for military use, and ECCN 1A995, which controls certain detection equipment and components not controlled by ECCN 1A004 or by this ECCN.

*Related Definitions:* (1) For the purposes of this entry, the term "dedicated" means committed entirely to a single purpose or device. (2) For the purposes of this entry, the term "continuous operation" describes the capability of the equipment to operate on line without human intervention. The intent of this entry is to control toxic gas monitoring systems capable of collection and detection of samples in environments such as chemical plants, rather than those used for batch-mode operation in laboratories.

* * * * *

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing. ECCN 2B352 is amended by revising paragraph (d)(1)(b) under "Items" in the List of Items Controlled to read as follows:

**2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* * * *
*Related Controls:* * * *
*Related Definitions:* * * *
*Items:*

* * * * *

d. * * *

d.1. * * *

d.1.b. Having any of the following characteristics:

d.1.b.1. Capable of being sterilized or disinfected in-situ; or

d.1.b.2. Using disposable or single-use filtration components.

* * * * *

■ 10. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, is amended by adding a new ECCN 2D351 immediately following ECCN 2D290 to read as follows:

**2D351 Dedicated "software" for toxic gas monitoring systems and their dedicated detecting components controlled by ECCN 2B351.**

**License Requirements**

*Reason for Control:* CB, AT

| Control(s) | Country chart |
|---|---|
| CB applies to entire entry ..... | CB Column 2. |
| AT applies to entire entry ..... | AT Column 1. |

**License Exceptions**

*CIV:* N/A.
*TSR:* N/A.

**List of Items Controlled**

*Unit:* $ value.
*Related Controls:* N/A.
*Related Definitions:* (1) For the purposes of this entry, the term "dedicated" means committed entirely to a single purpose or device. (2) See Section 772.1 of the EAR for the definitions of "software," "program," and "microprogram."
*Items:*
The list of items controlled is contained in the ECCN heading.

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E001 is amended by revising the CB controls paragraph in the "License Requirements" section to read as follows:

**2E001 "Technology" according to the General Technology Note for the "development" of equipment or "software" controlled by 2A (except 2A983, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998), or 2D (except 2D983, 2D991, 2D992, or 2D994).**

**License Requirements**

*Reason for Control:* * * *

| Control(s) | Country chart |
|---|---|
| * * * * * * * | |
| CB applies to "technology" for equipment controlled by 2B350 to 2B352, valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g, and software controlled by 2D351. | CB Column 2. |

* * * * *

Dated: June 29, 2009.

**Matthew S. Borman,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. E9–15827 Filed 7–2–09; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AM91**

## Vocational Rehabilitation and Employment Program—Duty To Assist

**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 VA's responsibility to provide notification regarding information or evidence needed for an individual to substantiate a claim for vocational rehabilitation benefits and services, and regarding applicable time periods. VA's duty to assist claimants in substantiating their claims for benefits was expanded by the Veterans Claims Assistance Act of 2000. This rulemaking incorporates those provisions in VA's regulations. Specifically, upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help the claimant obtain the evidence necessary to substantiate the claim. In addition, VA is making changes to improve readability and other clarifying changes that are nonsubstantive.

**DATES:** *Effective Date:* This final rule is effective August 5, 2009.

*Applicability Date:* For information concerning the date of applicability, see the Supplementary Information section of this document.

**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 July 1, 2008 (73 FR 37402), we proposed to amend regulations governing VA's responsibility to provide notification regarding information or evidence needed for an individual to substantiate a claim for vocational rehabilitation benefits and services, and regarding applicable time periods. We provided a 60-day comment period that ended on September 2, 2008.

We received comments from one organization and one individual. With respect to the individual commenter, the submission stated "see the attached for proposed changes to this regulation," yet we did not receive an attachment or the commenter's contact information. Consequently, we make no changes based on the commenter's submission.

The organization commented with respect to the 30-day period in proposed 38 CFR 21.32(a)(3) and (d) after which VA may decide a claim if the claimant has not responded to the notification provided under proposed § 21.32(a) concerning information and evidence that is necessary to substantiate the claim. The commenter expressed the view that 30 days from the date of notice is not sufficient time for a claimant to respond. It asserted that after taking into account time after the date of the notice until receipt by the claimant, and time for mailing back to VA, the 30-day period "will effectively give most disabled veterans only about 15 days from receipt of your letter in which to digest its contents, obtain assistance and/or needed documentation, and prepare and mail a response to you." We do not agree with this comment and make no change in the 30-day period based on the comment.

We note that the commenter provided no evidence supporting its assertions as to the time that is involved prior to receipt of VA's notice and that is needed to allow for receipt by VA of the claimant's response. Even considering that there may be significantly less than the full 30 days to prepare a response, a claimant need not provide all the information and evidence within the 30-day period. A claimant may delay VA action beyond the 30 days by simply responding with a request that VA wait beyond the 30-day period. We believe that the 30-day time period referred to in proposed § 21.32(a)(3) and (d) is a reasonable time period for these claimants to respond. It is specifically supported by our experience in administering VA's vocational rehabilitation programs, and is the same time for response provided in other circumstances under those programs. Further, whether or not the claimant responds within 30 days, proposed § 21.32 provided a one-year time limit for receipt by VA of the information of evidence referred to in the notice, and for readjudication if VA had decided the claim prior to the one-year time period. In addition, we note that the 30-day time period is supported by administrative concerns, and is intended to assure that a lack of response does not unnecessarily delay a VA decision on the claim.

With respect to proposed § 21.33(d), the commenter stated that it would be "unreasonable to expect that VA will be able to determine from a cursory review of a 'substantially complete application' that there is no reasonable possibility that any notice and/or assistance the VA would provide to the claimant would substantiate the claim." However, under proposed § 21.33(d), more than a cursory review would be involved before deciding to discontinue providing assistance. VA would be required to evaluate the application for benefits to determine whether any of the four circumstances under which VA will discontinue assistance exists. Further, the provision is consistent with principles relied upon throughout 38 CFR part 21. (See 38 CFR 21.1032(d) concerning VA's duty to assist claimants for VA education benefits.) We do not believe any change is warranted based on this comment.

VA appreciates the submissions in response to the proposed rule. For the reasons stated above and those in the notice of proposed rulemaking, the proposed rule is adopted as a final rule without change.

The preamble to the proposed rule provided notice of our intent that its provisions be applicable to claims filed on or after the effective date of the final rule. In accordance with that statement of our intent, VA will apply the provisions of this final rule to claims for vocational rehabilitation benefits and services filed on or after August 5, 2009.

### Paperwork Reduction Act of 1995

This document contains no provisions constituting a new 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 final rule would 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 "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866 because it 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 final rule will not directly affect any small entities. Only individuals could 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: June 29, 2009.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons stated 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. The authority citation for part 21, subpart A is revised 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 § 21.32 to read as follows:

**§ 21.32 Notification by VA of necessary information or evidence when a claim is filed; time for claimant response and VA action.**

The provisions of this section apply to claims that are governed by this subpart or subpart M of this part.

(a) *VA has a duty to notify claimants of necessary information or evidence.* Except when a claim cannot be substantiated because there is no legal basis for the claim, or undisputed facts render the claimant ineligible for the claimed benefit, when VA receives a complete or substantially complete application for vocational rehabilitation benefits and services provided under this subpart or subpart M of this part VA will:

(1) Notify the claimant of any information and evidence that is necessary to substantiate the claim;

(2) Inform the claimant which information and evidence, if any, the claimant is to provide to VA and which information and evidence, if any, VA will try to obtain for the claimant; and

(3) Inform the claimant of the time limit, as provided in paragraph (c) of this section, for responding to VA's notification, and of actions, as provided in paragraph (d) of this section, that VA may take to decide the claim if the claimant does not respond to such notification within 30 days.

(b) *Definitions for purposes of §§ 21.32 and 21.33.* For purposes of this section and § 21.33:

(1) The term *application* does not include a notice of disagreement.

(2) The term *notification* means the notice described in paragraph (a) of this section.

(3) The term *substantially complete application* means, for an individual's first application for vocational rehabilitation benefits and services administered by VA, an application containing:

(i) The claimant's name;

(ii) His or her relationship to the veteran, if applicable;

(iii) Sufficient information for VA to verify the claimed service, if applicable; and

(iv) The benefit claimed.

(4) The term *information* means nonevidentiary facts, such as the claimant's Social Security number or address, or the name of the educational institution the claimant is attending.

(c) *Time limit.* Any information and evidence described in the notification as information and evidence that the claimant is to provide must be received by VA within one year from the date of the notification. If VA does not receive the information and evidence from the claimant within that time period, VA may adjudicate the claim based on the information and evidence in the file.

(d) *Actions VA may take after 30 days if no response from claimant.* If the claimant has not responded to the notification within 30 days, VA may decide the claim before the expiration of the one-year period, based on all the information and evidence in the file, including information and evidence it has obtained on behalf of the claimant. If VA does so, however, and the claimant subsequently provides the information and evidence specified in the notification within one year of the date of the notification, VA must readjudicate the claim. If VA's decision on a readjudication is favorable to the claimant, the award of vocational rehabilitation benefits and services shall take effect as if the prior decision by VA on the claim had not been made.

(e) *Incomplete applications.* If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information. If the information necessary to complete the application is not received by VA within one year from the date of such notice, VA cannot

pay or provide any benefits based on that application.

(f) *Who VA will notify.* For the purpose of this section, when VA seeks to notify a claimant, it will provide such notice to:

(1) The claimant;

(2) His or her fiduciary, if any; and

(3) His or her representative, if any.

(Authority: 38 U.S.C. 5102, 5103, 5103A(a)(3))

■ 4. Immediately after § 21.32 and prior to the cross-reference, add § 21.33, to read as follows:

**§ 21.33 VA has a duty to assist claimants in obtaining evidence.**

The provisions of this section apply to claims that are governed by this subpart or subpart M of this part.

(a) *VA's duty to assist begins when VA receives a complete or substantially complete application.* (1) Except as provided in paragraph (d) of this section, upon receipt of a complete or substantially complete application for vocational rehabilitation benefits and services under this subpart or subpart M of this part, VA will:

(i) Make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim; and

(ii) Give the assistance described in paragraphs (b) and (c) of this section to an individual attempting to reopen a finally decided claim.

(2) VA will not pay any fees a custodian of records may charge to provide the records VA requests.

(Authority: 38 U.S.C. 5103A)

(b) *Obtaining records not in the custody of a Federal department or agency.* (1) VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency. These records include relevant records from:

(i) State or local governments;

(ii) Private medical care providers;

(iii) Current or former employers; and

(iv) Other non-Federal governmental sources.

(2) The reasonable efforts described in paragraph (b)(1) of this section will generally consist of an initial request for the records and, if VA does not receive the records, at least one follow-up request. The following are exceptions to this provision concerning the number of requests that VA generally will make:

(i) VA will not make a follow-up request if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile.

(ii) If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, reasonable efforts will include an initial request and, if VA does not receive the records, at least one follow-up request to the new source or an additional request to the original source.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including:

(i) The person, company, agency, or other custodian holding the records;

(ii) The approximate time frame covered by the records; and

(iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A)

(c) *Obtaining records in the custody of a Federal department or agency.* (1) Subject to paragraphs (c)(2) through (c)(4) of this section, VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to:

(i) Military records;

(ii) Medical and other records from VA medical facilities;

(iii) Records from non-VA facilities providing examination or treatment at VA expense; and

(iv) Records from other Federal agencies.

(2) VA will cease its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include cases in which the Federal department or agency advises VA that the requested records do not exist or that the custodian of such records does not have them.

(3) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal department or agency custodians. At VA's request, the claimant must provide enough information to identify and locate the existing records, including:

(i) The custodian or agency holding the records;

(ii) The approximate time frame covered by the records; and

(iii) In the case of medical treatment records, the condition for which treatment was provided.

(4) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.

(Authority: 38 U.S.C. 5103A)

(d) *Circumstances where VA will refrain from or discontinue providing assistance.* VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete or complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently not credible or clearly lack merit;

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law; and

(4) The claimant's lack of cooperation in providing or requesting information or evidence necessary to substantiate the claim.

(Authority: 38 U.S.C. 5103A)

(e) *Duty to notify claimant of inability to obtain records.* (1) VA will notify the claimant either orally or in writing when VA:

(i) Has made reasonable efforts to obtain relevant non-Federal records, but is unable to obtain them; or

(ii) After continued efforts to obtain Federal records, concludes that it is reasonably certain they do not exist or that further efforts to obtain them would be futile.

(2) For non-Federal records requests, VA may provide the notice to the claimant at the same time it makes its final attempt to obtain the relevant records.

(3) VA will make a written record of any oral notice conveyed under this paragraph to the claimant.

(4) The notice to the claimant must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) The fact described in paragraph (e)(1)(i) or (e)(1)(ii) of this section;

(iv) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

(i) The claimant;

(ii) His or her fiduciary, if any; and

(iii) His or her representative, if any.

(Authority: 38 U.S.C. 5102, 5103(a), 5103A)

## Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

■ 5. 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.

■ 6. Add § 21.8015 to read as follows:

**§ 21.8015 Notification by VA of necessary information or evidence when a claim is filed; time for claimant response and VA action; and VA's duty to assist claimants in obtaining evidence.**

The provisions of §§ 21.32 and 21.33 of subpart A of this part also apply to claims for benefits and services under this subpart.

[FR Doc. E9–15860 Filed 7–2–09; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8081]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

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

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

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

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

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

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

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

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30,

1993, Regulatory Planning and Review, 58 FR 51735.

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

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

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

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

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

**PART 64—[AMENDED]**

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

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

**§ 64.6 [Amended]**

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

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region I** | | | | |
| Massachusetts: | | | | |
| Acushnet, City of, Bristol County | 250048 | April 3, 1981, Emerg; July 19, 1982, Reg; July 7, 2009, Susp. | July 7, 2009 | July 7, 2009. |
| Attleboro, City of, Bristol County | 250049 | August 16, 1974, Emerg; September 29, 1978, Reg; July 7, 2009, Susp. | do* | Do. |
| Berkley, Town of, Bristol County | 250050 | February 19, 1974, Emerg; July 3, 1978, Reg; July 7, 2009, Susp. | do | Do. |
| Dartmouth, Town of, Bristol County | 250051 | September 10, 1971, Emerg; August 15, 1977, Reg; July 7, 2009, Susp. | do | Do. |
| Dighton, Town of, Bristol County | 250052 | March 9, 1973, Emerg; June 18, 1980, Reg; July 7, 2009, Susp. | do | Do. |
| Easton, Town of, Bristol County | 250053 | August 15, 1974, Emerg; February 3, 1982, Reg; July 7, 2009, Susp. | do | Do. |
| Fairhaven, Town of, Bristol County | 250054 | October 8, 1971, Emerg; March 16, 1976, Reg; July 7, 2009, Susp. | do | Do. |
| Fall River, City of, Bristol County | 250055 | September 14, 1977, Emerg; September 30, 1981, Reg; July 7, 2009, Susp. | do | Do. |
| Freetown, Town of, Bristol County | 250056 | August 11, 1975, Emerg; June 18, 1980, Reg; July 7, 2009, Susp. | do | Do. |
| Mansfield, Town of, Bristol County | 250057 | January 28, 1972, Emerg; April 1, 1977, Reg; July 7, 2009, Susp. | do | Do. |
| New Bedford, City of, Bristol County | 255216 | February 25, 1972, Emerg; July 6, 1973, Reg; July 7, 2009, Susp. | do | Do. |
| North Attleborough, Town of, Bristol County. | 250059 | February 10, 1975, Emerg; September 14, 1979, Reg; July 7, 2009, Susp. | do | Do. |
| Norton, Town of, Bristol County | 250060 | March 20, 1974, Emerg; June 1, 1979, Reg; July 7, 2009, Susp. | do | Do. |
| Raynham, Town of, Bristol County | 250061 | June 23, 1975, Emerg; July 2, 1980, Reg; July 7, 2009, Susp. | do | Do. |
| Rehoboth, Town of, Bristol County | 250062 | February 11, 1972, Emerg; September 1, 1977, Reg; July 7, 2009, Susp. | do | Do. |
| Salisbury, Town of, Bristol County | 250103 | November 17, 1972, Emerg; May 2, 1977, Reg; July 7, 2009, Susp. | do | Do. |
| Seekonk, Town of, Bristol County | 250063 | July 25, 1975, Emerg; September 5, 1979, Reg; July 7, 2009, Susp. | do | Do. |
| Somerset, Town of, Bristol County | 255220 | November 13, 1970, Emerg; March 17, 1972, Reg; July 7, 2009, Susp. | do | Do. |
| Swansea, Town of, Bristol County | 255221 | June 12, 1970, Emerg; August 6, 1971, Reg; July 7, 2009, Susp. | do | Do. |
| Taunton, City of, Bristol County | 250066 | June 11, 1973, Emerg; June 18, 1980, Reg; July 7, 2009, Susp. | do | Do. |
| Westport, Town of, Bristol County | 255224 | August 7, 1970, Emerg; July 16, 1971, Reg; July 7, 2009, Susp. | do | Do. |
| Maine: | | | | |
| Andover, Town of, Oxford County | 230160 | October 31, 1975, Emerg; January 3, 1985, Reg; July 7, 2009, Susp. | do | Do. |
| Bethel, Town of, Oxford County | 230088 | August 18, 1975, Emerg; May 2, 1991, Reg; July 7, 2009, Susp. | do | Do. |
| Buckfield, Town of, Oxford County | 230090 | August 5, 1975, Emerg; November 1, 1985, Reg; July 7, 2009, Susp. | do | Do. |
| Byron, Town of, Oxford County | 230330 | July 15, 1975, Emerg; September 4, 1985, Reg; July 7, 2009, Susp. | do | Do. |
| Canton, Town of, Oxford County | 230091 | July 3, 1975, Emerg; November 3, 1989, Reg; July 7, 2009, Susp. | do | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Denmark, Town of, Oxford County | 230476 | May 7, 1976, Emerg; July 2, 1980, Reg; July 7, 2009, Susp. | .....do | Do. |
| Dixfield, Town of, Oxford County | 230092 | June 23, 1975, Emerg; March 4, 1985, Reg; July 7, 2009, Susp. | .....do | Do. |
| Fryeburg, Town of, Oxford County | 230093 | April 7, 1975, Emerg; July 16, 1980, Reg; July 7, 2009, Susp. | .....do | Do. |
| Greenwood, Town of, Oxford County | 230332 | June 24, 1976, Emerg; September 4, 1985, Reg; July 7, 2009, Susp. | .....do | Do. |
| Hanover, Town of, Oxford County | 230333 | August 11, 1975, Emerg; September 4, 1985, Reg; July 7, 2009, Susp. | .....do | Do. |
| Hartford, Town of, Oxford County | 230334 | May 21, 1976, Emerg; November 1, 1985, Reg; July 7, 2009, Susp. | .....do | Do. |
| Hebron, Town of, Oxford County | 230335 | April 21, 1976, Emerg; December 31, 1976, Reg; July 7, 2009, Susp. | .....do | Do. |
| Hiram, Town of, Oxford County | 230094 | July 30, 1975, Emerg; February 1, 1980, Reg; July 7, 2009, Susp. | .....do | Do. |
| Lovell, Town of, Oxford County | 230336 | July 15, 1975, Emerg; February 17, 1989, Reg; July 7, 2009, Susp. | .....do | Do. |
| Mexico, Town of, Oxford County | 230095 | November 17, 1972, Emerg; August 15, 1977, Reg; July 7, 2009, Susp. | .....do | Do. |
| Milton, Township of, Oxford County | 230460 | March 19, 1975, Emerg; April 17, 1987, Reg; July 7, 2009, Susp. | .....do | Do. |
| Newry, Town of, Oxford County | 230337 | December 30, 1975, Emerg; September 4, 1985, Reg; July 7, 2009, Susp. | .....do | Do. |
| Norway, Town of, Oxford County | 230096 | November 11, 1974, Emerg; September 4, 1991, Reg; July 7, 2009, Susp. | .....do | Do. |
| Otisfield, Town of, Oxford County | 230203 | January 29, 1976, Emerg; May 19, 1981, Reg; July 7, 2009, Susp. | .....do | Do. |
| Oxford, Town of, Oxford County | 230869 | July 16, 1975, Emerg; May 2, 1991, Reg; July 7, 2009, Susp. | .....do | Do. |
| Paris, Town of, Oxford County | 230097 | February 28, 1975, Emerg; September 27, 1991, Reg; July 7, 2009, Susp. | .....do | Do. |
| Peru, Town of, Oxford County | 230098 | October 24, 1975, Emerg; May 17, 1990, Reg; July 7, 2009, Susp. | .....do | Do. |
| Porter, Town of, Oxford County | 230338 | October 7, 1976, Emerg; December 4, 1979, Reg; July 7, 2009, Susp. | .....do | Do. |
| Roxbury, Town of, Oxford County | 230181 | October 24, 1975, Emerg; September 4, 1985, Reg; July 7, 2009, Susp. | .....do | Do. |
| Rumford, Town of, Oxford County | 230099 | March 9, 1973, Emerg; July 16, 1980, Reg; July 7, 2009, Susp. | .....do | Do. |
| Stoneham, Town of, Oxford County | 230340 | October 1, 1975, Emerg; January 3, 1986, Reg; July 7, 2009, Susp. | .....do | Do. |
| Stow, Town of, Oxford County | 230186 | February 20, 1976, Emerg; November 14, 1978, Reg; July 7, 2009, Susp. | .....do | Do. |
| Sumner, Town of, Oxford County | 230187 | August 5, 1975, Emerg; September 27, 1985, Reg; July 7, 2009, Susp. | .....do | Do. |
| Sweden, Town of, Oxford County | 230341 | July 22, 1975, Emerg; October 31, 1978, Reg; July 7, 2009, Susp. | .....do | Do. |
| **Region III** | | | | |
| Virginia: | | | | |
| Brunswick County, Unincorporated Areas. | 510236 | April 4, 1974, Emerg; February 6, 1991, Reg; July 7, 2009, Susp. | .....do | Do. |
| Emporia, City of, Independent City | 510047 | February 5, 1974, Emerg; September 30, 1977, Reg; July 7, 2009, Susp. | .....do | Do. |
| Greensville County, Unincorporated Areas. | 510073 | February 25, 1974, Emerg; September 29, 1978, Reg; July 7, 2009, Susp. | .....do | Do. |
| Jarratt, Town of, Greensville County | 510263 | March 5, 1975, Emerg; October 8, 1982, Reg; July 7, 2009, Susp. | .....do | Do. |
| Lawrenceville, Town of, Brunswick County. | 510023 | May 28, 1974, Emerg; July 17, 1978, Reg; July 7, 2009, Susp. | .....do | Do. |
| Stony Creek, Town of, Sussex County | 510159 | April 9, 1974, Emerg; September 16, 1982, Reg; July 7, 2009, Susp. | .....do | Do. |
| Sussex County, Unincorporated Areas | 510192 | December 11, 1973, Emerg; March 2, 1983, Reg; July 7, 2009, Susp. | .....do | Do. |
| West Virginia: Berkeley County, Unincorporated Areas. | 540282 | July 29, 1975, Emerg; August 4, 1988, Reg; July 7, 2009, Susp. | .....do | Do. |
| **Region IV** | | | | |
| Alabama: | | | | |
| Ardmore, Town of, Limestone County | 010306 | July 9, 1979, Emerg; April 15, 1986, Reg; July 7, 2009, Susp. | .....do | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Athens, City of, Limestone County | 010146 | April 11, 1974, Emerg; September 28, 1979, Reg; July 7, 2009, Susp. | do | Do. |
| Limestone County, Unincorporated Areas. | 010307 | September 2, 1975, Emerg; July 16, 1981, Reg; July 7, 2009, Susp. | do | Do. |
| Mooresville, Town of, Limestone County. | 010455 | December 23, 2008, Emerg; NA, Reg; July 7, 2009, Susp. | do | Do. |
| Kentucky: Liberty, City of, Cassey County | 210054 | May 12, 1975, Emerg; July 3, 1986, Reg; July 7, 2009, Susp. | do | Do. |
| North Carolina: | | | | |
| Cajahs Mountain, Town of, Caldwell County. | 370452 | NA, Emerg; March 6, 1990, Reg; July 7, 2009, Susp. | do | Do. |
| Caldwell County, Unincorporated Areas | 370039 | June 19, 1978, Emerg; August 16, 1988, Reg; July 7, 2009, Susp. | do | Do. |
| Gamewell, Town of, Caldwell County | 370451 | NA, Emerg; February 15, 2000, Reg; July 7, 2009, Susp. | do | Do. |
| Granite Falls, Town of, Caldwell County | 370414 | August 9, 1988, Emerg; August 16, 1988, Reg; July 7, 2009, Susp. | do | Do. |
| Hudson, Town of, Caldwell County | 370450 | NA, Emerg; March 6, 1990, Reg; July 7, 2009, Susp. | do | Do. |
| Lenoir, City of, Caldwell County | 370040 | March 29, 1978, Emerg; August 16, 1988, Reg; July 7, 2009, Susp. | do | Do. |
| **Region V** | | | | |
| Ohio: | | | | |
| Centerburg, Village of, Knox County | 390307 | June 27, 1975, Emerg; January 6, 1982, Reg; July 7, 2009, Susp. | do | Do. |
| Danville, Village of, Knox County | 390308 | June 12, 1975, Emerg; August 24, 1984, Reg; July 7, 2009, Susp. | do | Do. |
| Gambier, Village of, Knox County | 390310 | February 3, 1976, Emerg; January 30, 1981, Reg; July 7, 2009, Susp. | do | Do. |
| Knox County, Unincorporated Areas | 390306 | NA, Emerg; October 27, 1993, Reg; July 7, 2009, Susp. | do | Do. |
| Mount Vernon, City of, Knox County | 390311 | January 21, 1974, Emerg; August 2, 1982, Reg; July 7, 2009, Susp. | do | Do. |
| **Region X** | | | | |
| Idaho: | | | | |
| Bannock County, Unincorporated Areas | 160009 | April 30, 1974, Emerg; September 5, 1979, Reg; July 7, 2009, Susp. | do | Do. |
| Downey, City of, Bannock County | 160165 | February 8, 1985, Emerg; February 8, 1985, Reg; July 7, 2009, Susp. | do | Do. |
| Inkom, City of, Bannock County | 160010 | July 16, 1975, Emerg; September 15, 1978, Reg; July 7, 2009, Susp. | do | Do. |
| Lava Hot Springs, City of, Bannock County. | 160011 | May 20, 1975, Emerg; August 1, 1979, Reg; July 7, 2009, Susp. | do | Do. |
| McCammon, City of, Bannock County | 160176 | December 21, 1978, Emerg; December 21, 1978, Reg; July 7, 2009, Susp. | do | Do. |
| Pocatello, City of, Bannock County | 160012 | February 7, 1974, Emerg; May 1, 1980, Reg; July 7, 2009, Susp. | do | Do. |

*-do- = Ditto.
*Code for reading third column:* Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 23, 2009.

**Deborah Ingram,**

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

[FR Doc. E9–15871 Filed 7–2–09; 8:45 am]

BILLING CODE 9110–12–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 9

**[WC Docket No. 08–171; FCC 08–249]**

## Implementation of the Net 911 Improvement Act of 2008

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission (Commission) has adopted rules implementing certain key provisions of the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), which was enacted on July 23, 2008. Congress directed the Commission to issue rules implementing certain key provisions of the NET 911 Act no later than October 21, 2008. In particular, to effectuate the statutory requirement that providers of interconnected voice over Internet Protocol (interconnected VoIP) service provide 911 and enhanced 911 (E911) service in full compliance with the Commission's rules, Congress mandated that the Commission issue regulations in this time frame that, among other

things, ensure that interconnected VoIP providers have access to any and all capabilities they need to satisfy that requirement.

**DATES:** Effective October 5, 2009, except for § 9.7(a) which contains information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of such requirements.

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

Interested parties may submit PRA comments identified by OMB Control Number 3060–1085, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail:* Parties who choose to file by e-mail should submit their comments to *Tim.Stelzig@fcc.gov.* Please include WC Docket Number 08–171 and FCC No. 08–249 in the subject line of the message.
- *Mail:* Parties who choose to file by paper should submit their comments to Tim Stelzig, Federal Communications Commission, Room 5–C261, 445 12th Street, SW., Washington, DC 20554.

In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Tim Stelzig, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0942. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (Order) in WC Docket No. 08–171, FCC 08–249, adopted and released October 21, 2008. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

**Final Paperwork Reduction Act of 1995 Analysis**

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

In this present document, we have assessed the effects of the rules implementing the Net 911 Improvement Act of 2008, and find the rules adopted are warranted. The reasons for this conclusion are explained in more detail below.

*Report to Congress:* On January 27, 2009, the Commission sent a copy of the Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. [A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register.**]

**Synopsis of the Order**

1. *Background.* The Commission released a notice of proposed rulemaking on August 25, 2008, seeking comment regarding the specific duties imposed by the NET 911 Act and the regulations that the Commission is required to adopt. *See* 73 FR 50741 (Aug. 28, 2008). The Commission sought comment, for example, on what 911 and E911 capabilities must be made available to interconnected VoIP providers, and how such capabilities could be made available on the same rates, terms, and conditions afforded to wireless providers. The Commission also sought comment on what technical, network security, or information privacy requirements regarding 911 and E911 calls are specific to interconnected VoIP service.

2. *Discussion.* In the Order, the Commission turned first to its obligation under section 6(c)(1) of the Wireless 911 Act to issue regulations ensuring that interconnected VoIP providers can exercise their rights of access to any and all "capabilities" they need to be able to provide 911 and E911 service in full compliance with the Commission's rules from "an entity with ownership or control over such capabilities." Congress did not define key terms of these provisions, such as the "capabilities" to which interconnected VoIP providers have a right of access, or an "entity" with ownership or control over capabilities, but left the elucidation of these terms to the Commission. The Commission interpreted these terms, examining the statutory language itself, its legislative history, and the record. The Commission next discussed the "rates, terms and conditions" that apply to that access. It then imposed certain security requirements to protect the integrity of the 911 system.

3. *Access to E911 Capabilities.* Need for Rules in General. The Order first discussed the scope of the Commission's obligation to "issue regulations implementing the [NET 911] Act, including regulations that * * * ensure that IP-enabled voice service providers have the ability to exercise their rights [to access]." The Commission concluded that having rules establishing standards for access to capabilities best fulfills the Commission's obligations and the goals of the NET 911 Act. Congress clearly intended for the Commission to implement regulations more specific than the statutory language itself. In section 6(c), Congress specifically directed the Commission to conduct this rulemaking to assure interconnected VoIP providers' rights under section (6)(b), taking into account specific factors, such as "any technical, network security, or information privacy requirements that are specific to IP-enabled voice services." If Congress had not intended the Commission to implement rules more detailed than the statute itself, it would not have instructed the Commission to take certain things into account; it would have left the statutory language as sufficient and self-effectuating. The Commission therefore disagreed with commenters who suggested that no specific rules are needed, or that any rules can simply parrot the statutory language.

4. The Commission also declined to issue highly detailed rules listing capabilities or entities with ownership or control of those capabilities. As recognized above and explained further in the Order, the nation's 911 system varies from locality to locality, and overly specific rules would fail to reflect these local variations. Furthermore, as Congress recognized, the nation's 911 system is evolving from its origins in the circuit-switched world into an IP-based network. The Commission stated that its rules should be sufficiently flexible to accommodate this ongoing process. Indeed, Congress specifically prohibited the Commission from "issu[ing] regulations that require or impose a specific technology or technological standard," which specific, invariable rules could do. The Commission therefore adopted rules that establish standards for determining to what capabilities interconnected VoIP providers have a right of access and from which entities, and explained in the Order what capabilities and entities would typically (but not necessarily) be encompassed in today's architecture.

5. *Standard for Right of Access to Capabilities.* Consistent with the approach just described, the Commission adopted rules establishing a standard for determining to what capabilities interconnected VoIP providers have a right of access, and also providing examples of the capabilities that will typically be required in most local 911 and E911 architectures. In later parts of the Order, the Commission explained that capabilities may only be used for the provision of 911 and E911 service.

6. The analysis in the Order begins first with the statutory language. While the statute does not define the term "capabilities," it does provide that interconnected VoIP providers have a right of access to capabilities on the same "rates, terms, and conditions that are provided to a provider of commercial mobile service." Pursuant to its authority under the NET 911 Act, the Commission issued rules to grant interconnected VoIP providers a right of access to the capabilities commercial mobile radio service (CMRS) providers use to provide E911 service equal to the access rights made available to CMRS providers. Congress clearly recognized a commonality between the capabilities needed by interconnected VoIP providers and those already used by CMRS providers. Indeed, if an owner or controller of a capability used to provide E911 service made it available to a CMRS provider at a certain rate but refused to grant interconnected VoIP providers access to that same capability, that interconnected VoIP provider would not "*have a right of access to such capabilities* * * * to provide [E911] service on the same rates, terms, and conditions that are provided to a provider of [CMRS]." The Commission also found support for this position in the context in which this legislation was enacted. As explained above, the capabilities used by interconnected VoIP providers—particularly those providing a nomadic or mobile service—to provide E911 service are similar to those used by CMRS providers; interpreting the statute to mean that interconnected VoIP providers have a right of access to those capabilities used by CMRS providers furthers Congress's goal of "ensur[ing] that consumers using Voice over Internet Protocol (VoIP) service can access enhanced 911 (E–911) emergency services by giving VoIP providers access to the emergency services infrastructure."

7. Second, with respect to any capabilities that are not provided to CMRS providers for their provision of E911 service, the Commission interpreted the NET 911 Act as granting interconnected VoIP providers a right of access if the capability is necessary for the interconnected VoIP provider to provide E911 service in compliance with the Commission's rules. For reasons similar to those outlined in the previous paragraph, the Commission stated the Commission's belief that the right of an interconnected VoIP provider to certain rates, terms, and conditions necessarily includes a right of access to such capability. Section 6(c)(1)(C) of the Wireless 911 Act provides that "with respect to any capabilities that are not required to be made available to a [CMRS] provider but that the Commission determines * * * are *necessary* for an [interconnected VoIP] provider to comply with its obligations [to provide E911 service in accordance with the Commission's rules], that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a [CMRS] provider." The Commission also found that this text limits interconnected VoIP providers' right of access to such capabilities to those that are *necessary* to provide E911 service in compliance with the Commission's rules.

8. Third, regardless whether a capability is used by a CMRS provider or not, for any capability an interconnected VoIP provider gets pursuant to rights granted in the NET 911 Act and the Commission's implementing rules, the Order stated that such capability may be used by that provider *only* for the purpose of providing E911 service in accordance with the Commission's rules. The NET 911 Act explicitly mandates this limit on interconnected VoIP providers' statutory access rights with respect to capabilities CMRS providers use to provide E911 service. The Commission recognized that the statute does not expressly contain a similar limitation in section 6(c)(1)(C), which grants interconnected VoIP providers a right to access the capabilities they need to provide E911 service even if they are not capabilities CMRS providers use to provide E911 service. Nevertheless, the Commission's interpretation of the NET 911 Act is informed by the legislative history as well as Congress's overarching purpose in enacting the provisions at issue here. Both with respect to capabilities that are used by CMRS providers and those that are not, the NET 911 Act is clear that its purpose is to facilitate interconnected VoIP providers' ability to provide E911 service in compliance with the Commission's rules, without granting access rights to additional capabilities. This overarching purpose indicates that Congress intended that *any* capabilities to which access is gained pursuant to the NET 911 Act may be used exclusively for the purpose of providing E911 service. In addition, the record indicates that CMRS providers use most of the capabilities interconnected VoIP providers need to provide E911 service. The Commission did not find any reason to believe that Congress would have granted interconnected VoIP providers more expansive rights with respect to the relatively small subset of capabilities that are not used by CMRS providers to provide E911 service than those capabilities that are. Therefore, the Commission stated it is reasonable to require that interconnected VoIP providers use all capabilities that they obtain pursuant to the NET 911 Act and this Order exclusively for the provision of E911 service in compliance with the Commission's rules.

9. *Typical Capabilities.* The record reflects general consensus as to what capabilities are used by CMRS providers today and what capabilities are not used by CMRS providers but are "necessary" for interconnected VoIP providers to comply with the Commission's rules. As AT&T explains, CMRS providers have been offering E911 services for many years and even interconnected VoIP providers have been providing such services since 2005. The Commission therefore interpreted "capabilities" to include all those items described in part II of the Order that are used by wireless

providers today or that are not used by wireless providers but are necessary to interconnected VoIP providers' compliance with the Commission's rules. Thus, in a typical local architecture, "capabilities" will include: the Selective Router; the trunk line(s) between the Selective Router and the PSAP(s); the Automatic Location Information Database (ALI Database); the Selective Router Database (SR Database); the Database Management System (DBMS), the Master Street Address Guide (MSAG); pseudo-ANIs (p-ANIs); Emergency Service Numbers (ESNs); mobile switching center capabilities; mobile positioning center capabilities; shell records; the data circuits connecting these elements; and the network elements, features, processes, and agreements necessary to enable the use of these elements.

10. *Entities with Ownership or Control of Capabilities.* The Commission concluded that interconnected VoIP providers are entitled to access to capabilities from *any* entity that owns or controls such capabilities. Again, it found this interpretation to be the most natural reading of the statutory language. Section 6(b) grants interconnected VoIP providers a right to access "such capabilities," with "such" referring back to the "capabilities [an interconnected VoIP seeks] to provide 9–1–1 and enhanced 9–1–1 service from an entity with ownership or control over such capabilities." Congress's use of the term "an entity" instead of "the entity" strongly suggests that Congress understood that capabilities might be available from multiple sources and intended a broad interpretation of the scope of "entities" obligated to provide access to capabilities. The Commission therefore interpreted the NET 911 Act to impose obligations of access on each of the entities described in Part II.D of the Order, including in typical E911 architectures: incumbent LECs, PSAPs and local authorities, VoIP Positioning Centers (VPCs), CMRS providers, competitive carriers, and the Interim RNA to the extent any of these entities has "ownership or control" over any capabilities to which interconnected VoIP providers have a right of access.

11. The Commission recognized that in some instances, multiple entities may have ownership or control of similar capabilities in the same local area. It saw nothing in the NET 911 Act to suggest that only certain of those entities would have the obligation to provide access. Indeed, if some but not all entities had that obligation, disputes would certainly arise over which entities were subject to the Act, causing delays in granting interconnected VoIP providers access and thwarting Congress's ultimate goal of "facilitating the rapid deployment of IP-enabled 911 and E911 services." Finally, the Commission recognize that it does not normally regulate some of the entities it described in this part of the Order, such as PSAPs and VPCs. Yet Congress has imposed a duty on them and instructed the Commission to issue regulations to "ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b)." As Congress has instructed the Commission to take these actions, it has also given the Commission the authority it needs to do so.

12. *Rates, Terms, and Conditions.* The NET 911 Act also mandates that the rates, terms, and conditions under which access to 911 and E911 capabilities is provided are to be the same as made available to CMRS providers. Under the rules the Commission issued in the Order, interconnected VoIP providers may exercise these rights to fulfill their obligation to provide 911 and E911 in full compliance with the Commission's rules.

13. As a threshold matter, the Commission found that issuing rules of general applicability regarding rates, terms, and conditions best fulfills the goals of the NET 911 Act. The rules adopted in the Order are specific enough to bring market certainty and clear direction while also being flexible enough to ensure that Congress's aims are met in a wide variety of circumstances. Contrary to the approach advocated by some commenters, the Commission found no indication that Congress intended the Commission to issue detailed regulations regarding the pricing methodology under which E911 capabilities must be made available. Instead, the Commission found it sufficient to specify that those rates, terms, and conditions must *in all instances be reasonable.* One indicia of reasonableness will be whether the rates, terms, and conditions under which E911 capabilities are made available to interconnected VoIP providers are the same as the rates, terms, and conditions made available to CMRS providers.

14. First, the Commission considered the case where a capability is in fact provided to CMRS carriers, such that the owner or controller of that capability must grant interconnected VoIP providers access to that capability. In that case, the statute is clear on its face that the capability must be made available "on the same rates, terms, and conditions that are provided to" a CMRS provider. The Commission interpreted the term "provided" as used in this provision as encompassing not only those capabilities that are actually provisioned to a CMRS provider as well as the rates, terms, and conditions under which they are provisioned, but also those capabilities that are currently offered to a CMRS provider as well as the rates, terms, and conditions under which they are offered. The Commission interpreted "provided" broadly to ensure that interconnected VoIP providers are able to access the same capabilities that CMRS providers may access on the same rates, terms, and conditions that are available to CMRS providers.

15. In addition, if an owner or controller of a capability does not provide a capability to CMRS providers but is required to grant interconnected VoIP providers access to such capability under the rules described in Part III.A of the Order, such access must be provided on the rates, terms, and conditions that would be offered to a CMRS provider. The Commission did not believe that Congress intended for it, within the 90-day timeframe the Commission was given to adopt rules implementing the NET 911 Act, to conduct detailed pricing proceedings to determine, for each such capability offered by each type of provider in various localities around the country, what the exact price for each capability would be if it were offered to CMRS providers. Congress clearly did intend, however, for the Commission to provide guidance as to how the rates, terms, and conditions for these capabilities should be determined. To further that intent, minimize disputes over these rates, terms, and conditions, and help achieve Congress's ultimate goal "[t]o promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E911 services," the Commission provided further guidance. Specifically, if an owner or controller does not provide a capability to CMRS providers but is required to give interconnected VoIP providers access to such capability under the rules described in Part III.A of the Order, such access must be made available on the same rates, terms, and conditions that are offered to other telecommunications carriers or any other entities. The Commission stated that such rates, terms, and conditions are a reasonable proxy for the rates, terms and conditions that would be provided to a CMRS provider. To the extent an owner or controller of a capability used to provide E911 service provides a single capability to more than one CMRS provider or other entity, an interconnected VoIP provider that

requests access to such capability is entitled to the rates, terms and conditions provided to any such single other provider.

16. If an owner or controller of a capability required to be made available does not currently make that capability available to any other entities, the rates, terms and conditions under which that owner or controller must provide access to a requesting interconnected VoIP provider must be reasonable, and should be reached through commercial negotiation. Given the industry's track record in working diligently and on an accelerated time table to implement the *VoIP 911 Order* and the importance all industry participants attach to having a reliable and effective 911 and E911 network, the Commission stated that the capability owner or controller and the interconnected VoIP provider will be able to expeditiously negotiate reasonable rates, terms, and conditions for that capability. The Commission clarified that in granting interconnected VoIP providers new contractual rights, it did not abrogate any existing commercial agreements that interconnected VoIP providers may already have reached for access to capabilities for the provision of E911 service. Finally, the Commission emphasized that all rights to capabilities that the NET 911 Act grants to an interconnected VoIP provider are "for the exclusive purpose of complying with * * * its obligations under subsection (a) [*i.e.* the Commission's existing E911 rules]." The NET 911 Act does not grant, and the Commission's rules do not grant, access to capabilities beyond what interconnected VoIP providers need to provide 911 and E911 service, nor does the statute or the Commission's rules grant access to capabilities for any purpose other than compliance with the Commission's 911 and E911 rules.

17. *Technical, Network Security, and Information Privacy Requirements.* To protect the security and reliability of the E911 network, interconnected VoIP providers may obtain access to E911 capabilities only in compliance with the specific criteria set forth below. The safety of our nation's citizens vitally depends upon protecting the emergency services network from security threats. In the Order, as required by the NET 911 Act, the Commission granted interconnected VoIP providers access to E911 capabilities. Expanding the range of entities that have access to the E911 network raises new challenges. As NENA has said, VoIP technology "presents new challenges and security issues [for 911 service] as it breaks the bond between access and service provider characteristics of legacy networks and at this time lacks the legislative and regulatory requirements that apply to more conventional telephone services."

18. Although Congress has granted interconnected VoIP providers additional rights to access E911 capabilities, in most cases, the Commission did not anticipate significant deviation from current practices. Commenters agree that interconnected VoIP providers today are successfully using numbering partners and other 911 service providers to deliver E911 calls to the appropriate PSAP. For example, Vonage reports that for "98.45% of its customers, Vonage [currently] provides the full suite of E911 service" pursuant to NENA's standard and is in the process of obtaining the capabilities it needs to provide E911 service for most of the remainder of its customers.

19. NENA has developed national VoIP E911 requirements, referred to as NENA's i2 standard, that are "designed to ensure that VoIP 9–1–1 calls are routed and presented in a wireline equivalent manner." The Commission stated that any interconnected VoIP provider that is in compliance with this standard already is coordinating its efforts with the other organizational entities responsible for providing E911 service.

20. The Commission required interconnected VoIP providers to comply with all applicable industry network security standards to the same extent as traditional telecommunications carriers when they access capabilities traditionally used by carriers. The Commission recognized the security of the nation's emergency services network depends on many interlocking measures that collectively preserve the integrity of the 911 system from unauthorized access and use. For instance, in addition to the security concerns discussed above, the network elements used to provide 911 service must be kept physically secure. The E911 network must also be kept secure against unauthorized electronic access, such as through hacking. NENA reports that "[t]he existing Emergency services network provides a relatively high degree of security for correctness of information, integrity, and authorization of access, authenticity/secrecy, and accuracy of information." By requiring interconnected VoIP providers to comply with the same standards as carriers, the Commission was able to expand access to the E911 system without compromising network security.

21. Finally, the Commission's rules contemplate that incumbent LECs and other owners or controllers of 911 or E911 infrastructure will acquire information regarding interconnected VoIP providers and their customers for use in the provision of emergency services. The Commission stated it fully expects that these entities will use this information only for the provision of E911 service. The Commission further clarified that no entity may use customer information obtained as a result of the provision of 911 or E911 services for marketing purposes.

**Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NET 911 Notice in WC Docket 08–171. *See* 73 FR 50741 (Aug. 28, 2008). The Commission sought written public comment on the proposals in the Net 911 Notice, including comment on the IRFA. The Commission received no comments on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*A. Need for, and Objectives of, the Rules*

2. In the Report and Order (Order), the Commission adopted rules implementing certain key provisions of the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act). The NET 911 Act, signed into law on July 23, 2008, is designed to "promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E911 services, encourage the Nation's transition to a national IP-enabled emergency network, and improve 911 and enhanced 911 (E911) access to those with disabilities." Congress directed the Commission to issue rules implementing certain key provisions of the NET 911 Act no later than October 21, 2008. In particular, to effectuate the requirement that providers of interconnected voice over Internet Protocol (interconnected VoIP) service provide 911 and enhanced 911 (E911) service without exception, Congress mandated that the Commission issue regulations in this time frame that, among other things, ensure that interconnected VoIP providers have access to any capabilities they need to satisfy that requirement. In the Order, the Commission fulfilled that duty and took steps to ensure that interconnected VoIP providers will use the capabilities they gain as a result of the Order to provide 911 and E911 in complete accord with the Commission's rules.

3. Specifically, in the Order the Commission issued rules that give interconnected VoIP providers rights of access to any and all capabilities necessary to provide E911 from any entity that owns or controls those capabilities. The Commission establish a standard to determine the rates, terms, and conditions that will apply to that access and also restrict interconnected VoIP provider's access to capabilities for the sole purpose of providing 911 or E911 service. Finally, interconnected VoIP providers must comply with all applicable industry network security standards to the same extent as traditional telecommunications carriers when they access capabilities traditionally used by carriers.

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

4. No comments were submitted specifically in response to the IRFA.

*C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

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

6. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.

7. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

8. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

1. Telecommunications Service Entities

9. *Wireline Carriers and Service Providers.* We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees) and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

10. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LECs. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the Order.

11. *Competitive LECs, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 1,005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers," and all 89 have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

12. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

13. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

14. *Payphone Service Providers (FSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such

a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

16. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 85 are estimated to have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

18. *800 and 800-Like Service Subscribers.* These toll-free services fall within the broad economic census category of Telecommunications Resellers. This category "comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census Bureau data for 2002 show that there were 1,646 firms in this category that operated for the entire year. Of this total, 1,642 firms had employment of 999 or fewer employees, and four firms had employment of 1,000 employees or more. Thus, the majority of these firms can be considered small. Additionally, it may be helpful to know the total numbers of telephone numbers assigned in these services. Commission data show that, as of December 2007, the total number of 800 numbers assigned was 7,860,000, the total number of 888 numbers assigned was 5,210,184, the total number of 877 numbers assigned was 4,388,682, and the total number of 866 numbers assigned was 7,029,116.

19. *International Service Providers.* The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "All Other Telecommunications."

20. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, a business is small if it has $15.0 million or less in average annual receipts. Census Bureau data for 2002 show that there were a total of 371 firms under this category that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

21. The second category of All Other Telecommunications "comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." For this category, a business is small if it has $25.0 million or less in average annual receipts. Census Bureau data for 2002 show that for this category there were a total of 332 firms that operated for the entire year. Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

22. *Wireless Telecommunications Service Providers.* Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

23. *Wireless Telecommunications Carriers (except Satellite).* The SBA has developed a small business size standard for wireless firms under the broad category of "Wireless Telecommunications Carriers (except Satellite)." Under this category, a wireless business is small if it has 1,500 or fewer employees. Because the data currently available were gathered under previous NAICS codes, the discussion in the remainder of this section tracks these formerly used categories.

24. Under its prior categories, the SBA categorized wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." For the former census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the former census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

25. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category "Cellular and Other Wireless Telecommunications." Under this SBA

category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small. Also, according to Commission data, 434 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 222 of these are small under the SBA small business size standard.

26. *Paging.* The SBA has developed a small business size standard for the broad economic census category of "Paging." Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. In addition, according to Commission data, 281 carriers have reported that they are engaged in the provision of "Paging and Messaging Service." Of this total, we estimate that 279 have 1,500 or fewer employees, and two have more than 1,500 employees. Thus, in this category the majority of firms can be considered small.

27. We also note that, in the *Paging Second Report and Order*, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. In this context, a small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. We also note that, currently, there are approximately 74,000 Common Carrier Paging licenses.

28. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million or less for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million or less for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

29. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 434 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 222 of these are small under the SBA small business size standard.

30. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

31. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

32. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees

and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. Assuming this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

33. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

34. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

35. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

36. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

37. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

38. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage

requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, had average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, had average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

39. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

40. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

41. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service ("BRS"), formerly Multipoint Distribution Service ("MDS"), and the Educational Broadband Service ("EBS"), formerly Instructional Television Fixed Service ("ITFS"), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Other standards also apply, as described.

42. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

43. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

44. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

45. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licensees as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that

the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

46. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

47. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

*47A. 24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

2. Cable and OVS Operators

48. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

49. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

50. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

51. *Open Video Systems (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston,

Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

3. Internet Service Providers

52. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs "provide clients access to the Internet and generally provide related services such as Web hosting, Web page designing, and hardware or software consulting related to Internet connectivity." Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

4. Other Internet-Related Entities

53. *Web Search Portals.* Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, Web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "operate Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users." The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

54. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily * * * provid[e] infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

55. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." Our action pertains to VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, Web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

56. *Internet Publishing and Broadcasting.* "This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast." The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

57. *Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users. The SBA has developed a small business size standard of $25 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts of under $10 million, and an additional 403 firms had receipts of between $10 million and $24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year. Of these, 31,416 had annual receipts of under $10 million, and an additional 565 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 6,357 firms that operated for the entire year. Of these, 6,187 had annual receipts of under $10 million, and an additional 101 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of the firms in each of these three categories are small entities that may be affected by our action.

5. Equipment Manufacturers

58. SBA small business size standards are given in terms of "firms." Census Bureau data concerning computer manufacturers, on the other hand, are given in terms of "establishments." We note that the number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the census numbers provided below may reflect inflated numbers of businesses in the given category, including the numbers of small businesses.

59. *Electronic Computer Manufacturing.* This category "comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers." The SBA has developed a small business size standard for this

category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 485 establishments in this category that operated with payroll during 2002. Of these, 476 had employment of under 1,000, and an additional four establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities.

60. *Computer Storage Device Manufacturing.* These establishments manufacture "computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 170 establishments in this category that operated with payroll during 2002. Of these, 164 had employment of under 500, and five establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

61. *Computer Terminal Manufacturing.* "Computer terminals are input/output devices that connect with a central computer for processing." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 71 establishments in this category that operated with payroll during 2002, and all of the establishments had employment of under 1,000. Consequently, we estimate that all of these establishments are small entities.

62. *Other Computer Peripheral Equipment Manufacturing.* Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 860 establishments in this category that operated with payroll during 2002. Of these, 851 had employment of under 1,000, and an additional five establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities.

63. *Audio and Video Equipment Manufacturing.* These establishments manufacture "electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data, there were 571 establishments in this category that operated with payroll during 2002. Of these, 560 had employment of under 500, and ten establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

64. *Electron Tube Manufacturing.* These establishments are "primarily engaged in manufacturing electron tubes and parts (except glass blanks)." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data, there were 102 establishments in this category that operated with payroll during 2002. Of these, 97 had employment of under 500, and one establishment had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

65. *Bare Printed Circuit Board Manufacturing.* These establishments are "primarily engaged in manufacturing bare (*i.e.*, rigid or flexible) printed circuit boards without mounted electronic components." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 936 establishments in this category that operated with payroll during 2002. Of these, 922 had employment of under 500, and 12 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

66. *Semiconductor and Related Device Manufacturing.* Examples of manufactured devices in this category include "integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 1,032 establishments in this category that operated with payroll during 2002. Of these, 950 had employment of under 500, and 42 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

67. *Electronic Capacitor Manufacturing.* These establishments manufacture "electronic fixed and variable capacitors and condensers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 104 establishments in this category that operated with payroll during 2002. Of these, 101 had employment of under 500, and two establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

68. *Electronic Resistor Manufacturing.* These establishments manufacture "electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 79 establishments in this category that operated with payroll during 2002. All of these establishments had employment of under 500. Consequently, we estimate that all of these establishments are small entities.

69. *Electronic Coil, Transformer, and Other Inductor Manufacturing.* These establishments manufacture "electronic inductors, such as coils and transformers." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 365 establishments in this category that operated with payroll during 2002. All of these establishments had employment of under 500. Consequently, we estimate that all of these establishments are small entities.

70. *Electronic Connector Manufacturing.* These establishments manufacture "electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 321 establishments in this category that operated with payroll during 2002. Of these, 315 had employment of under 500, and three establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

71. *Printed Circuit Assembly (Electronic Assembly) Manufacturing.*

These are establishments "primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 868 establishments in this category that operated with payroll during 2002. Of these, 839 had employment of under 500, and 18 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

72. *Other Electronic Component Manufacturing.* The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data, there were 1,627 establishments in this category that operated with payroll during 2002. Of these, 1,616 had employment of under 500, and eight establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

73. *Fiber Optic Cable Manufacturing.* These establishments manufacture "insulated fiber-optic cable from purchased fiber-optic strand." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 96 establishments in this category that operated with payroll during 2002. Of these, 95 had employment of under 1,000, and one establishment had employment of 1,000 to 2,499. Consequently, we estimate that the majority or all of these establishments are small entities.

74. *Other Communication and Energy Wire Manufacturing.* These establishments manufacture "insulated wire and cable of nonferrous metals from purchased wire." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 356 establishments in this category that operated with payroll during 2002. Of these, 353 had employment of under 1,000, and three establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority or all of these establishments are small entities.

*D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements*

75. Although the Commission granted interconnected VoIP providers additional rights to access E911 capabilities in the Order, in most cases, the Commission does not anticipate significant deviation from current practices. In the Commission's *VoIP 911 Order,* the Commission required interconnected VoIP providers to provide E911 service using the existing wireline 911 infrastructure. Under the Commission's VoIP rules, many interconnected VoIP providers today are successfully using numbering partners and other 911 service providers to deliver 911 or E911 calls to the appropriate PSAP, designated statewide default answering point, or appropriate local emergency authority.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

76. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

77. The *NET 911 Notice* sought comment regarding the specific duties imposed by the NET 911 Act and the regulations that the Commission is required to adopt. Specifically, in the *NET 911 Notice,* the Commission invited comment on what costs and burdens any new rules might impose upon small entities and how they could be ameliorated. For instance, the Commission specifically sought comment as to whether there are any issues or significant alternatives that the Commission should consider to ease the burden on small entities. The Commission emphasized that it must assess the interests of small businesses in light of the NET 911 Act's goal of ensuring that interconnected VoIP providers have access to any and all capabilities they need to provide 911 and E911 service.

78. While, like the Net 911 Act, the rules the Commission adopted in the Order apply to all providers of interconnected VoIP service and any entity that owns or controls 911 or E911 capabilities, the Commission attempted to minimize the impact of the new rules on small entities to the extent consistent with Congress's intent. The Commission considered several alternatives, and in the Order, imposed minimal regulation on small entities to the extent possible. As an initial matter, as noted above, many interconnected VoIP providers today are successfully delivering E911 calls to the appropriate PSAP and the Commission does not anticipate significant deviation from current practices, particularly from small entities. As they have done in the past, small interconnected VoIP providers may still offer E911 service indirectly through a third party, such as a competitive LEC, or through any other solution that allows the provider to offer E911 service in compliance with the Commission's rules.

79. Furthermore, the Commission considered but declined to issue highly detailed rules listing specific capabilities or entities with ownership or control of those capabilities. As recognized above, the nation's 911 system varies from locality to locality, and overly specific rules would fail to reflect those local variations, thereby placing undue burdens on all entities, including any small entities, involved in providing E911 service. Small interconnected VoIP providers and small entities that own or control those capabilities will benefit from the flexibility of the Commission's rules, which, as noted above, will accommodate the local variations as well as the various technologies necessary for 911 and E911 service.

80. The Commission also considered but declined to issue highly detailed rules setting forth the pricing methodology under which a capability would be provided to an interconnected VoIP provider. The Commission's rules required that the rates, terms, and conditions shall be: (1) The same as the rates, terms, and conditions that are made available to CMRS providers, or (2) in the event such capability is not made available to CMRS providers, the same rates, terms, and conditions that are made available to any telecommunications carrier or other entity for the provision of 911 or E911 service; or (3) otherwise on the rates, terms, and conditions reached through commercial agreement; and (4) in any case, reasonable. The Commission concluded that it was important that the rates, terms, and conditions be consistent with Congress' intent and in all instances be reasonable. Thus, those small entities that seek to access

capabilities directly will be assured they have access to capabilities under reasonable rates, terms, and conditions, thereby minimizing significant economic impact on small entities.

**Ordering Clauses**

81. Accordingly, *it is ordered* that pursuant to sections 1, 4(i)–(j), 251(e) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 251(e), 303(r), and section 101 of the NET 911 Act, the Report and Order in WC Docket No. 08–171 *is adopted,* and that part 9 of the Commission's Rules, 47 CFR part 9, is added as set forth in the rule changes. Effective October 5, 2009, except for § 9.7(a) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB).

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

**List of Subjects in 47 CFR Part 9**

Communications, Interconnected Voice over Internet Protocol Services, Telephone.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

**Final Rules**

■ For the reasons discussed in the preamble, part 9 of Title 47 of the Code of Federal Regulations is amended to read as follows:

## PART 9–INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES

■ 1. The authority citation for part 9 is amended to read as follows:

**Authority:** 47 U.S.C. 151, 154(i)–(j), 251(e), 303(r), and 615a–1 unless otherwise noted.

■ 2. Section 9.1 is revised to read as follows.

**§ 9.1 Purposes.**

The purposes of this part are to set forth the 911 and E911 service requirements and conditions applicable to interconnected Voice over Internet Protocol service providers, and to ensure that those providers have access to any and all 911 and E911 capabilities they need to comply with those 911 and E911 service requirements and conditions.

■ 3. Section 9.3 is amended by adding in alphabetical order definitions of "Automatic Location Information (ALI)" and "CMRS" to read as follows.

**§ 9.3 Definitions.**

* * * * *

*Automatic Location Information (ALI).* Information transmitted while providing E911 service that permits emergency service providers to identify the geographic location of the calling party. *CMRS.* Commercial Mobile Radio Service, as defined in § 20.9 of this chapter.

* * * * *

■ 4. Section 9.7 is added to read as follows.

**§ 9.7 Access to 911 and E911 service capabilities.**

(a) *Access.* Subject to the other requirements of this part, an owner or controller of a capability that can be used for 911 or E911 service shall make that capability available to a requesting interconnected VoIP provider as set forth in paragraphs (a)(1) and (a)(2) of this section.

(1) If the owner or controller makes the requested capability available to a CMRS provider, the owner or controller must make that capability available to the interconnected VoIP provider. An owner or controller makes a capability available to a CMRS provider if the owner or controller offers that capability to any CMRS provider. (2) If the owner or controller does not make the requested capability available to a CMRS provider within the meaning of paragraph (a)(1) of this section, the owner or controller must make that capability available to a requesting interconnected VoIP provider only if that capability is necessary to enable the interconnected VoIP provider to provide 911 or E911 service in compliance with the Commission's rules.

(b) *Rates, terms, and conditions.* The rates, terms, and conditions on which a capability is provided to an interconnected VoIP provider under paragraph (a) of this section shall be reasonable. For purposes of this paragraph, it is evidence that rates, terms, and conditions are reasonable if they are:

(1) The same as the rates, terms, and conditions that are made available to CMRS providers, or

(2) In the event such capability is not made available to CMRS providers, the same rates, terms, and conditions that are made available to any telecommunications carrier or other entity for the provision of 911 or E911 service.

(c) *Permissible use.* An interconnected VoIP provider that obtains access to a capability pursuant to this section may use that capability only for the purpose of providing 911 or E911 service in accordance with the Commission's rules.

[FR Doc. E9–15822 Filed 7–2–09; 8:45 am]
BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 0809121213–9221–02]**

**RIN 0648–AX96**

## Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

**SUMMARY:** This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) July 1, 2009. Comments on this final rule must be received no later than 5 p.m., local time on August 5, 2009.

**ADDRESSES:** You may submit comments, identified by RIN 0648–AX96 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- Fax: 206–526–6736, Attn: Gretchen Arentzen
- Mail: Barry Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Gretchen Arentzen.

Instructions: All comments received are a part of the public record and will

generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Arentzen (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail gretchen.arentzen@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/*.

**Background**

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. A proposed rule to implement the 2009–2010 groundfish harvest specifications and management measures published on December 31, 2008, (73 FR 80516). The final rule to implement the 2009–2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). This final rule was subsequently amended by an inseason action on April 27, 2009 (74 FR 19011). These specifications and management measures are codified in the CFR (50 CFR part 660, subpart G).

Changes to current groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its June 13–18, 2009, meeting in Spokane, Washington. The Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs. The projected impacts to four of the seven overfished species (canary, widow, and darkblotched rockfishes and Pacific ocean perch) will increase slightly with the adjustments to the sablefish cumulative limits and Rockfish Conservation Area (RCA) boundary changes in the limited entry non-whiting trawl fishery north of 40 10.00' N. lat. However, these impacts, when combined with the impacts from all other fisheries, are not projected to exceed the 2009 rebuilding OYs for these species. All other adjustments to non-trawl fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2009. Estimated mortality of overfished and target species are the result of management measures designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs.

**Limited Entry Non-Whiting Trawl Fishery Management Measures**

The most recently available fishery information indicates that catches of sablefish are lower than previously projected. Sablefish is a healthy target species that is caught coastwide. Based on the most recent fishery information (dated May 31, 2009), catch projections through the end of 2009 indicate that, absent regulatory changes, only 3,004 mt of the 3,280 mt sablefish allocation will be harvested. The Council considered options for changes to management measures to allow additional access to sablefish in the limited entry non-whiting trawl fishery. Under current regulations, the trawl fishery south of 40° 10.00' N. lat. has greater opportunities for harvest during summer months than the trawl fishery north of 40°10.00' N. lat. due to more favorable weather conditions. Because of these temporal and spatial differences in favorable weather, increases to trip limits and/or RCA adjustments would be most useful for fisheries north of 40° 10.00' N. lat., allowing for additional harvest opportunities during brief times of good weather in the North.

The Council considered trip limit increases and changes to RCA boundaries to allow additional harvest of this healthy stock, and the potential impacts to overfished species. The modest increases to trip limits, combined with opening the area shoreward of the RCA between the boundary line approximating the 75–fm (137–m) depth contour and the boundary line approximating the 100–fm (183–m) depth contour, result in slightly higher projected impacts to canary rockfish, Pacific Ocean perch, darkblotched rockfish, and widow rockfish than were projected for the limited entry non-whiting trawl fishery at the beginning of the year. However, even with the slight increase in impacts for these overfished species, when combined with the projected impacts from all other fisheries, none of the 2009 OYs for these rebuilding species are projected to be exceeded.

Therefore, the Council recommended and NMFS is implementing the following increases to sablefish cumulative limits north of 40° 10.00' N. lat. on July 1, 2009: increase cumulative trip limits, caught using large and small footrope gear, from "22,000 lb/2 months" in July October to "24,000 lb/ 2 months" and increase limits from "18,000 lb/ 2 months" in November-December to "20,000 lb/ 2 months"; increase cumulative trip limits, caught using selective flatfish trawl gear and multiple gears, from "7,500 lb/ 2 months" in July-October and "5,000 lb/ 2 months" in November-December to "11,000 lb/ 2 months".

The Council also recommended and NMFS is implementing the following changes to the trawl RCA boundary lines between Cape Alava (48 10.00' N. lat.) and 40° 10.00' N. lat.: open the fishing area between the boundary line approximating the 75–fm (137–m) depth contour and the boundary line approximating the 100–fm (183–m) depth contour, by shifting the shoreward boundary of the non-trawl RCA boundary from the boundary line approximating the 75–fm (137–m) depth contour to the boundary line approximating the 100–fm (183–m) depth contour in this area, beginning on July 1, 2009.

The Council also considered the most recently available fishery information which indicated that catch estimates of petrale sole through the end of the year (2,494 mt) were projected to exceed the 2009 petrale sole OY of 2,433 mt. Petrale sole landing estimates indicate that the higher than expected catch was primarily attributed to the extended winter fishery in early 2009. During the 2009–2010 specifications and management measures the January-February management measures that allow for additional access to winter petrale sole aggregations were extended to run through March. At the beginning of 2009, projected catch was expected to remain below the 2009 petrale sole OY.

However catches in January-March accrued more quickly than anticipated. Therefore, the Council considered available options to reduce petrale sole catches inseason to keep projected impacts below the 2009 petrale sole OY of 2,433 mt.

In addition to inseason management to keep catches of petrale sole below the 2009 OY, the Council considered the preliminary results of the 2009 petrale sole stock assessment that indicates the stock is less healthy than previously thought. The preliminary stock assessment indicates that if the entire 2009 and 2010 OYs are taken, then the stock will start the 2011–2012 biennium in an overfished status, triggering a rebuilding plan and likely very large catch reductions for this very important commercial stock. Therefore, the Council identified a Point of Concern under the Groundfish FMP for petrale sole and NMFS will analyze potential management measures developed by the Groundfish Management Team (GMT), an advisory body to the Council, and issue a proposed rule for 2009–2010 to prevent petrale sole from becoming overfished in 2011. The intention is that, if necessary after consideration of the final stock assessment, public comment, and Council advice, the final rule will put in place measures to reduce petrale sole catch for November 1, 2009 through the remainder of the year and for 2010.

To allow for additional management flexibility for a species with an identified Point of Concern, the Council recommended reductions in the petrale sole trip limits to prevent exceeding the 2009 petrale sole OY, for period 5 (September-October), rather than for period 6 (November-December), as the GMT had initially recommended.

Therefore, the Council recommended and NMFS is implementing the following decreases to petrale sole cumulative limits coastwide during period 5 (September-October): decrease cumulative trip limits, caught using large and small footrope gear north of 40° 10.00' N. lat., from "110,000 lb (49,895 kg) per 2 months, no more than 30,000 lb (13,608 kg) per 2 months of which may be petrale sole" to "110,000 lb (49,895 kg) per 2 months, no more than 5,000 lb (2,268 kg) per 2 months of which may be petrale sole≥; decrease cumulative trip limits, caught using selective flatfish trawl gears and multiple gears north of 40° 10.00' N. lat., from "90,000 lb (40,823 kg) per 2 months, no more than 18,000 lb (8,165 kg) per 2 months of which may be petrale sole" to "90,000 lb (40,823 kg) per 2 months, no more than 5,000 lb (2,268 kg) per 2 months of which may be petrale sole"; and decrease cumulative trip limits, caught using all trawl gears south of 40° 10.00' N. lat., from "110,000 lb (49,895 kg) per 2 months, no more than 30,000 lb (13,608 kg) per 2 months of which may be petrale sole" to "110,000 lb (49,895 kg) per 2 months, no more than 5,000 lb (2,268 kg) per 2 months of which may be petrale sole".

**Limited Entry Fixed Gear and Open Access Fishery Management Measures**

*California Scorpionfish (Scorpaena guttata)*

California scorpionfish is a healthy stock that occurs primarily South of 36 N. lat. and is fished South of Point Conception (34° 27' N. lat.). The stock was last assessed in 2005, and is estimated to be above 40 percent of the unfished biomass. Total mortality of California scorpionfish has been well below the harvest specifications in recent years, and in 2007 only 68 mt of the 2007 California scoprionfish OY of 175 mt was harvested (39 percent of the OY). The Council considered increases to trip limits to allow additional harvest of this healthy stock, and the potential impacts to overfished species. Harvest of California scorpionfish occurs in shallow nearshore waters primarily south of 34° 27.00' N. lat. and scorpionfish are caught in conjunction with other California State managed nearshore species. Nearshore fishery information indicates that there are relatively few interactions with overfished species at these depths and latitudes. Therefore, no impacts to overfished species are expected.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the limited entry fixed gear and open access fishery South of 40° 10.00' N. lat. that increase California scorpionfish trip limits from 800 lb (363 kg) per 2 months in July-October and from 600 lb (272 kg) per 2 months in November-December to 1,200 lb (544 kg) per 2 months from July-December.

*Minor Nearshore and Black Rockfish Trip Limits North of 40° 10.00' N. lat.*

Black rockfish is a nearshore rockfish species that was assessed in 2007 as two separate stocks, and therefore the harvest specifications are divided at the Washington/Oregon border (46° 16.00' N. lat.). The 2009 black rockfish OY for the area south of 46° 16.00' N. lat. is 1,000 mt. Oregon and California work cooperatively to manage their nearshore fisheries (both commercial and recreational) to approach but not exceed the black rockfish OY in this area. The 2009 black rockfish commercial allocation for California is 185 mt. At their June meeting, the Council considered the most recent projected impacts to black rockfish in the commercial non-trawl fisheries off the California coast through the rest of the year. These estimates indicated that under the current trip limit structure, catch was estimated to be only 74 mt. However, recent landings information indicates that trip limits for minor nearshore rockfish and black rockfish were not being attained south of 40° 10.00' N. lat.; and therefore increases in trip limits were only considered for the area between 42° N. lat. and 40° 10.00' N. lat.

The Council considered increases to black rockfish trip limits to allow additional harvest of this healthy stock, and the potential impacts to overfished species. An increase in trip limits is not anticipated to increase projected impacts to overfished species, because projected impacts to overfished species are calculated assuming that a much larger portion of the black rockfish allocation is harvested. The Council also considered the potential for increased impacts to blue rockfish if the trip limit were increased leaving the current minor nearshore rockfish and black rockfish trip limit structure as "no more than 1,200 lb (544 kg) may be species other than black or blue rockfish". There was a concern that increasing the overall limit, while leaving the trip limit structure to exclude both black and blue rockfish from the sub-limit, would increase blue rockfish catch and could potentially exceed the allocation, and in turn the OY for blue rockfish. The Council, however, received new information that the 20–fm (37–m) depth contour restriction has reduced nearshore fishery interactions with blue rockfish.

Therefore, the Council recommended and NMFS is implementing trip limit changes for minor nearshore and black rockfish in the limited entry fixed gear and open access fishery between 42° N. lat. and 40° 10.00' N. lat.: from "6,000 lb (2,722 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish" to "7,000 lb (3,175 kg) per two months, no more than 1,200 lb (544 kg) of which may be species other than black rockfish" on July 1.

*Limited Entry Fixed Gear Sablefish Daily Trip Limit Fishery*

Over the past several years, the amount of sablefish harvested in the limited entry fixed gear sablefish daily trip limit (DTL) fishery north of 36° N. lat. has been lower than their sablefish allocation. The Council implemented a

precautionary adjustment that moderately raised the daily, weekly and bi-monthly trip limits for sablefish in this fishery on May 1, 2009 (74 FR 19011). At their June 13–18, 2009 meeting the Council considered industry requests to further increase trip limits in this fishery. The best and most recently available fishery information indicates that, even with the May 1, 2009 inseason adjustments, the entire sablefish allocation would not be harvested through the end of the year. To provide additional harvest opportunities for this healthy stock, the Council considered a modest increase to the two-month cumulative trip limit for sablefish in this fishery and the potential impacts on overall catch levels and overfished species. Trip limits in this fishery have been fairly stable over time; therefore some uncertainty surrounds how changes in trip limits will affect effort and landings. The Council also considered that the overall number of participants is restricted to vessels registered to a limited entry permit with the necessary gear and species endorsements. The effects of a small increase in trip limits in this fishery can be monitored, and any additional adjustments can be made to approach, but not exceed, the sablefish allocation for the limited entry fixed gear sablefish DTL fishery. This increase in trip limits is not anticipated to increase projected impacts to overfished species, because projected impacts to overfished species are calculated assuming that the entire sablefish allocation is harvested.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the limited entry fixed gear fishery north of 36 N. lat. that increase sablefish DTL fishery limits from "500 lb (227 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 5,500 lb (2,495 kg) per 2 months" to "500 lb (227 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 6,000 lb (2,722 kg) per 2 months" beginning in period 4, on July 1.

*Open Access Sablefish DTL Fishery*

The most recent catch information from 2009 fisheries (May 31, 2009) indicates that catches of sablefish north of 36° N. lat. are lower than previously anticipated. Without any changes to current management measures, catches in this fishery through the end of the year are projected to be below the 2009 sablefish allocation. To provide additional harvest opportunities for this healthy stock, the Council considered increasing trip limits for sablefish in this fishery and the potential impacts on overall sablefish and overfished species catch levels. The Council considered modest increases to the weekly and bi-monthly limits for sablefish in the open access fishery in order to approach, but not exceed, the 2009 sablefish OY. This modest increase in trip limits is not anticipated to increase projected impacts to overfished species, because projected impacts to overfished species are calculated assuming that the entire sablefish allocation is harvested.

Therefore, the Council recommended and NMFS is implementing an increase for the open access fishery trip limits north of 36 N. lat. that changes sablefish limits from "300 lb (136 kg) per day, or 1 landing per week of up to 800 lb (363 kg), not to exceed 2,400 lb (1,089 kg) per 2 months" to "300 lb (136 kg) per day, or 1 landing per week of up to 950 lb (431 kg), not to exceed 2,750 lb (1,247 kg) per 2 months" beginning in period 4, on July 1.

In addition to the revisions to Tables 3 (North), 3 (South), 4 (North), 4 (South), 5 (North), and 5 (South) to part 660, subpart G described above, non-substantive technical edits are made to the RCA description in lines 1–6 and in footnotes 5 and 6 of these tables to clarify that the boundary lines of the RCA are described by latitude and longitude coordinates that, when connected in the order listed, create a line that approximates the depth contour. In most cases, the RCA is not defined by the depth contour itself. These technical edits were made at the request of NMFS Enforcement agents.

**Classification**

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective July 1, 2009, or as quickly as possible thereafter.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its June 13–18, 2009, meeting in Spokane, WA. The Council recommended that these changes be implemented on or as close as possible to July 1, 2009. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach without exceeding the OYs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California. These adjustments to management measures must be implemented in a timely manner to allow fishermen an opportunity to harvest higher limits in 2009 for sablefish, black rockfish, chilipepper rockfish and California scorpionfish beginning July 1, 2009, and to prevent exceeding the 2009 petrale sole OY by reducing cumulative limits in September-October. The reduction in cumulative limits for petrale sole in September-October will give additional management flexibility for petrale sole in the winter of 2009 and beyond. The restructuring of the minor nearshore and black rockfish trip limit must be in place by July 1 or else a mid-period change would cause confusion for the fishermen and problems for enforcement.

Modifications to the trawl RCA and increases to cumulative limits for: sablefish in the limited entry trawl fishery, the limited entry fixed gear fishery, and the open access fishery; chilipepper in the limited entry trawl fishery; and California scorpionfish and black rockfish in the limited entry fixed gear fishery and the open access fishery, are necessary to relieve a restriction by allowing fishermen increased opportunities to harvest available healthy stocks while staying within the OYs for these species. These changes must be implemented in a timely manner, by July 1, 2009, so that fishermen are allowed increased opportunities to harvest available healthy stocks and meet the objective of

the Pacific Coast Groundfish FMP to allow fisheries to approach, but not exceed, OYs. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because making this regulatory change by July 1 allows additional harvest in fisheries that are important to coastal communities.

Changes to petrale sole trip limits in the limited entry trawl fishery must be implemented in a timely manner by September 1, 2009, to prevent the total mortality of petrale sole from exceeding the 2009 OY. Failure to make this change to the petrale sole OY by September 1, 2009 could reduce management flexibility in November-December 2009 and beyond by allowing too much harvest during the year and forcing potentially much larger reductions in cumulative limits during winter months.

Allowing the current management measures to remain in place could jeopardize managers' ability to provide for year-round harvest opportunities for healthy stocks. Delaying these changes would keep management measures in place that are not based on the best available data which could deny fishermen access to available harvest. Such delay would impair achievement of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities, extending fishing opportunities as long as practicable during the fishing year, or staying within OYs for petrale sole.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian Fisheries.

Dated: June 29, 2009.

**Alan D. Risenhoover,**

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 is amended to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 USC 773 *et seq.*

■ 2. Tables 3 (North), 3 (South), 4 (North), 4 (South), 5 (North), and 5 (South) to part 660, subpart G are revised to read as follows:

BILLING CODE 3510–22–S

**Table 3 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 061509

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | North of 43°10' N. lat. | shore - modified[7/] 200 fm line[6/] | shore - 200 fm line[6/] | shore - 150 fm line[6/] | | shore - 200 fm line[6/] | shore - modified[7/] 200 fm line[6/] |
| 2 | 48°10' N. lat. - 45°46' N. lat. | 75 fm line[6/] - modified[7/] 200 fm line[6/] | 75 fm line[6/] - 200 fm line[6/] | 75 fm line[6/] - 150 fm line[6/] | 100 fm line[6/] - 150 fm line[6/] | 75 fm line[6/] - 200 fm line[6/] | 75 fm line[6/] - modified[7/] 200 fm line[6/] |
| 3 | 45°46' N. lat. - 40°10' N. lat. | | | 75 fm line[6/] - 200 fm line[6/] | 100 fm line[6/] - 200 fm line[6/] | | |

Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.

**See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).**

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 4 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 1,500 lb/ 2 months | | | | | |
| 5 | **Pacific ocean perch** | 1,500 lb/ 2 months | | | | | |
| 6 | **DTS complex** | | | | | | |
| 7 | Sablefish | | | | | | |
| 8 | large & small footrope gear | 18,000 lb/ 2 months | | 22,000 lb/ 2 months | 24,000 lb/ 2 months | | 20,000 lb/ 2 months |
| 9 | selective flatfish trawl gear | 5,000 lb/ 2 months | 7,500 lb/ 2months | | 11,000 lb/ 2 months | | |
| 10 | multiple bottom trawl gear[8/] | 5,000 lb/ 2 months | 7,500 lb/ 2months | | 11,000 lb/ 2 months | | |
| 11 | Longspine thornyhead | | | | | | |
| 12 | large & small footrope gear | 22,000 lb/ 2 months | | | | | |
| 13 | selective flatfish trawl gear | 3,000 lb/ 2 months | 5,000 lb/ 2 months | | | | 3,000 lb/ 2 months |
| 14 | multiple bottom trawl gear[8/] | 3,000 lb/ 2 months | 5,000 lb/ 2 months | | | | 3,000 lb/ 2 months |
| 15 | Shortspine thornyhead | | | | | | |
| 16 | large & small footrope gear | 17,000 lb/2 months | | | | | |
| 17 | selective flatfish trawl gear | 3,000 lb/ 2 months | | | | | |
| 18 | multiple bottom trawl gear[8/] | 3,000 lb/ 2 months | | | | | |
| 19 | Dover sole | | | | | | |
| 20 | large & small footrope gear | 110,000 lb/ 2 months | | | | | |
| 21 | selective flatfish trawl gear | 40,000 lb/ 2 months | 45,000 lb/ 2 months | | | | 40,000 lb/ 2 months |
| 22 | multiple bottom trawl gear[8/] | 40,000 lb/ 2 months | 45,000 lb/ 2 months | | | | 40,000 lb/ 2 months |

TABLE 3 (North)

*Table 3 (North). Continued*

TABLE 3 (North) con't

| | | | | | | |
|---|---|---|---|---|---|---|
| 23 | **Whiting** | | | | | |
| 24 | midwater trawl | Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED. | | | | |
| 25 | large & small footrope gear | Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip. | | | | |
| 26 | **Flatfish** (except Dover sole) | | | | | |
| 27 | Arrowtooth flounder | | | | | |
| 28 | large & small footrope gear | 150,000 lb/ 2 months | | | | |
| 29 | selective flatfish trawl gear | 90,000 lb/ 2 months | | | | |
| 30 | multiple bottom trawl gear [8/] | 90,000 lb/ 2 months | | | | |
| 31 | Other flatfish [3/], English sole, starry flounder, & Petrale sole | | | | | |
| 32 | large & small footrope gear for Other flatfish [3/], English sole, & starry flounder | 110,000 lb/ 2 months | 110,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months |
| 33 | large & small footrope gear for Petrale sole | 25,000 lb/ 2 months | | | | 40,000 lb/ 2 months |
| 34 | selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder | 90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | | 90,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole. |
| 35 | selective flatfish trawl gear for Petrale sole | | | | | |
| 36 | multiple bottom trawl gear [8/] | 90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 18,000 lb/ 2 months of which may be petrale sole. | | 90,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 90,000 lb/ 2 months, no more than 16,000 lb/ 2 months of which may be petrale sole. |
| 37 | **Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish** | | | | | |
| 38 | midwater trawl for Widow rockfish | Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED. | | | | |
| 39 | large & small footrope gear | 300 lb/ 2 months | | | | |
| 40 | selective flatfish trawl gear | 300 lb/ month | | 1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish | | 300 lb/ month |
| 41 | multiple bottom trawl gear [8/] | 300 lb/ month | | 300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish | | 300 lb/ month |

*Table 3 (North). Continued*

| | | | | | |
|---|---|---|---|---|---|
| 42 | **Canary rockfish** | | | | |
| 43 | large & small footrope gear | CLOSED | | | |
| 44 | selective flatfish trawl gear | 100 lb/ month | 300 lb/ month | 100 lb/ month | |
| 45 | multiple bottom trawl gear [8/] | CLOSED | | | |
| 46 | **Yellowtail** | | | | |
| 47 | midwater trawl | Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED. | | | |
| 48 | large & small footrope gear | 300 lb/ 2 months | | | |
| 49 | selective flatfish trawl gear | 2,000 lb/ 2 months | | | |
| 50 | multiple bottom trawl gear [8/] | 300 lb/ 2 months | | | |
| 51 | **Minor nearshore rockfish & Black rockfish** | | | | |
| 52 | large & small footrope gear | CLOSED | | | |
| 53 | selective flatfish trawl gear | 300 lb/ month | | | |
| 54 | multiple bottom trawl gear [8/] | CLOSED | | | |
| 55 | **Lingcod** [4/] | | | | |
| 56 | large & small footrope gear | 1,200 lb/ 2 months | 4,000 lb/ 2 months | | |
| 57 | selective flatfish trawl gear | | 1,200 lb/2 months | | |
| 58 | multiple bottom trawl gear [8/] | | | | |
| 59 | **Pacific cod** | 30,000 lb/ 2 months | 70,000 lb/ 2 months | | 30,000 lb/ 2 months |
| 60 | **Spiny dogfish** | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | |
| 61 | **Other Fish** [5/] | Not limited | | | |

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 3 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 061509

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | South of 40°10' N. lat. | 100 fm line[6/] - 150 fm line[6/ 7/] | | | | | |
| | All trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. | | | | | | |
| | **See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 2 | **Minor slope rockfish[2/] & Darkblotched rockfish** | | | | | | |
| 3 | 40°10' - 38° N. lat. | 15,000 lb/ 2 months | | | 10,000 lb/ 2 months | | 15,000 lb/ 2 months |
| 4 | South of 38° N. lat. | 55,000 lb/ 2 months | | | | | |
| 5 | **Splitnose** | | | | | | |
| 6 | 40°10' - 38° N. lat. | 15,000 lb/ 2 months | | | 10,000 lb/ 2 months | | 15,000 lb/ 2 months |
| 7 | South of 38° N. lat. | 55,000 lb/ 2 months | | | | | |
| 8 | **DTS complex** | | | | | | |
| 9 | Sablefish | 20,000 lb/ 2 months | | | | | |
| 10 | Longspine thornyhead | 22,000 lb/ 2 months | | | | | |
| 11 | Shortspine thornyhead | 17,000 lb/ 2 months | | | | | |
| 12 | Dover sole | 110,000 lb/ 2 months | | | | | |
| 13 | **Flatfish** (except Dover sole) | | | | | | |
| 14 | Other flatfish[3/], English sole, & starry flounder | 110,000 lb/ 2 months | 110,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole. | | | 110,000 lb/ 2 months, no more than 5,000 lb/ 2 months of which may be petrale sole. | 110,000 lb/ 2 months |
| 15 | Petrale sole | 50,000 lb/ 2 months | | | | | 50,000 lb/ 2 months |
| 16 | Arrowtooth flounder | 10,000 lb/ 2 months | | | | | |
| 17 | **Whiting** | | | | | | |
| 18 | midwater trawl | Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED. | | | | | |
| 19 | large & small footrope gear | Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip. | | | | | |

TABLE 3 (South)

*Table 3 (South). Continued*

| | | | | | |
|---|---|---|---|---|---|
| 20 | **Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish** | | | | |
| 21 | large footrope or midwater trawl for Minor shelf rockfish & Shortbelly | 300 lb/ month | | | |
| 22 | large footrope or midwater trawl for Chilipepper | 5,000 lb/ 2 months | 12,000 lb/ 2 months | | |
| 23 | large footrope or midwater trawl for Widow & Yelloweye | CLOSED | | | |
| 24 | small footrope trawl for Minor Shelf, Shortbelly, Widow & Yelloweye | 300 lb/ month | | | |
| 25 | small footrope trawl for Chilipepper | 5,000 lb/ 2 months | 12,000 lb/ 2 months | | |
| 26 | **Bocaccio** | | | | |
| 27 | large footrope or midwater trawl | 300 lb/ 2 months | | | |
| 28 | small footrope trawl | CLOSED | | | |
| 29 | **Canary rockfish** | | | | |
| 30 | large footrope or midwater trawl | CLOSED | | | |
| 31 | small footrope trawl | 100 lb/ month | 300 lb/ month | 100 lb/ month | |
| 32 | **Cowcod** | CLOSED | | | |
| 33 | **Bronzespotted rockfish** | CLOSED | | | |
| 34 | **Minor nearshore rockfish & Black rockfish** | | | | |
| 35 | large footrope or midwater trawl | CLOSED | | | |
| 36 | small footrope trawl | 300 lb/ month | | | |
| 37 | **Lingcod[4/]** | | | | |
| 38 | large footrope or midwater trawl | 1,200 lb/ 2 months | 4,000 lb/ 2 months | | |
| 39 | small footrope trawl | | 1,200 lb/ 2 months | | |
| 40 | **Pacific cod** | 30,000 lb/ 2 months | 70,000 lb/ 2 months | 30,000 lb/ 2 months | |
| 41 | **Spiny dogfish** | 200,000 lb/ 2 months | 150,000 lb/ 2 months | 100,000 lb/ 2 months | |
| 42 | **Other Fish[5/] & Cabezon** | Not limited | | | |

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
5/ Other fish are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling.
6/ The Rockfish Conservation Area is an area closed to fishing by particulary gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 4 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.**

**Other Limits and Requirements Apply – Read § 660.301 - § 660.399 before using this table** 061509

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[6/]:** | | | | | | |
| 1 | North of 46°16' N. lat. | shoreline - 100 fm line[6/] | | | | | |
| 2 | 46°16' N. lat. - 45°03.83' N. lat. | 30 fm line[6/] - 100 fm line[6/] | | | | | |
| 3 | 45°03.83' N. lat. - 43°00' N. lat. | 30 fm line[6/] - 125 fm line[6/7/] | | | | | |
| 4 | 43°00' N. lat. - 42°00' N. lat. | 20 fm line[6/] - 100 fm line[6/] | | | | | |
| 5 | 42°00' N. lat. - 40°10' N. lat. | 20 fm depth contour - 100 fm line[6/] | | | | | |
| | **See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 6 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 4,000 lb/ 2 months | | | | | |
| 7 | **Pacific ocean perch** | 1,800 lb/ 2 months | | | | | |
| 8 | **Sablefish** | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months | | 500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 5,500 lb/ 2 months | 500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months | | 500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 5,500 lb/ 2 months |
| 9 | **Longspine thornyhead** | 10,000 lb/ 2 months | | | | | |
| 10 | **Shortspine thornyhead** | 2,000 lb/ 2 months | | | | | |
| 11 | **Dover sole** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 12 | **Arrowtooth flounder** | | | | | | |
| 13 | **Petrale sole** | | | | | | |
| 14 | **English sole** | | | | | | |
| 15 | **Starry flounder** | | | | | | |
| 16 | **Other flatfish[1/]** | | | | | | |
| 17 | **Whiting** | 10,000 lb/ trip | | | | | |
| 18 | **Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish** | 200 lb/ month | | | | | |
| 19 | **Canary rockfish** | CLOSED | | | | | |
| 20 | **Yelloweye rockfish** | CLOSED | | | | | |
| 21 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 22 | North of 42° N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/] | | | | | |
| 23 | 42° - 40°10' N. lat. | 6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/] | | | 7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish[3/] | | |
| 24 | **Lingcod[4/]** | CLOSED | | 800 lb/ 2 months | | 400 lb/ month | CLOSED |
| 25 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 26 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 27 | **Other fish[5/]** | Not limited | | | | | |

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 4 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 061509

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[5/]:** | | | | | | |
| 1 | 40°10' - 34°27' N. lat. | 30 fm line[5/] - 150 fm line[5/] | | | | | |
| 2 | South of 34°27' N. lat. | 60 fm line[5/] - 150 fm line[5/] (also applies around islands) | | | | | |
| | **See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 3 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 40,000 lb/ 2 months | | | | | |
| 4 | **Splitnose** | 40,000 lb/ 2 months | | | | | |
| 5 | **Sablefish** | | | | | | |
| 6 | 40°10' - 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 5,000 lb/ 2 months | | 500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 5,500 lb/ 2 months | 500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months | | 500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 5,500 lb/ 2 months |
| 7 | South of 36° N. lat. | 400 lb/ day, or 1 landing per week of up to 1,500 lb | | | | | |
| 8 | **Longspine thornyhead** | 10,000 lb / 2 months | | | | | |
| 9 | **Shortspine thornyhead** | | | | | | |
| 10 | 40°10' - 34°27' N. lat. | 2,000 lb/ 2 months | | | | | |
| 11 | South of 34°27' N. lat. | 3,000 lb/ 2 months | | | | | |
| 12 | **Dover sole** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 13 | **Arrowtooth flounder** | | | | | | |
| 14 | **Petrale sole** | | | | | | |
| 15 | **English sole** | | | | | | |
| 16 | **Starry flounder** | | | | | | |
| 17 | **Other flatfish[1/]** | | | | | | |
| 18 | **Whiting** | 10,000 lb/ trip | | | | | |
| 19 | **Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)** | | | | | | |
| 20 | 40°10' - 34°27' N. lat. | Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper. | | | | | |
| 21 | South of 34°27' N. lat. | 3,000 lb/ 2 months | CLOSED | 3,000 lb/ 2 months | | | |
| 22 | **Chilipepper rockfish** | | | | | | |
| 23 | 40°10' - 34°27' N. lat. | Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above | | | | | |
| 24 | South of 34°27' N. lat. | 2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA | | | | | |
| 25 | **Canary rockfish** | CLOSED | | | | | |
| 26 | **Yelloweye rockfish** | CLOSED | | | | | |
| 27 | **Cowcod** | CLOSED | | | | | |
| 28 | **Bronzespotted rockfish** | CLOSED | | | | | |
| 29 | **Bocaccio** | | | | | | |
| 30 | 40°10' - 34°27' N. lat. | Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above | | | | | |
| 31 | South of 34°27' N. lat. | 300 lb/ 2 months | CLOSED | 300 lb/ 2 months | | | |

TABLE 4 (South)

*Table 4 (South). Continued*

**TABLE 4 (South)**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 32 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 33 | Shallow nearshore | 600 lb/ 2 months | CLOSED | 800 lb/ 2 months | 900 lb/ 2 months | 800 lb/ 2 months | 600 lb/ 2 months |
| 34 | Deeper nearshore | | | | | | |
| 35 | 40°10' - 34°27' N. lat. | 700 lb/ 2 months | CLOSED | 700 lb/ 2 months | | 600 lb/ 2 months | 700 lb/ 2 months |
| 36 | South of 34°27' N. lat. | 500 lb/ 2 months | | 600 lb/ 2 months | | | |
| 37 | California scorpionfish | 600 lb/ 2 months | CLOSED | 600 lb/ 2 months | 1,200 lb/ 2 months | | |
| 38 | **Lingcod**[3/] | CLOSED | | 800 lb/ 2 months | | 400 lb/ month | CLOSED |
| 39 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 40 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 41 | **Other fish**[4/] **& Cabezon** | Not limited | | | | | |

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 5 (North) to Part 660, Subpart G -- 2009-2010 Trip Limits for Open Access Gears North of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 061509

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| **Rockfish Conservation Area (RCA)[6/]:** | | | | | | | |
| 1 | North of 46°16' N. lat. | shoreline - 100 fm line[6/] | | | | | |
| 2 | 46°16' N. lat. - 45°03.83' N. lat. | 30 fm line[6/] - 100 fm line[6/] | | | | | |
| 3 | 45°03.83' N. lat. - 43°00' N. lat. | 30 fm line[6/] - 125 fm line[6/ 7/] | | | | | |
| 4 | 43°00' N. lat. - 42°00' N. lat. | 20 fm line[6/] - 100 fm line[6/] | | | | | |
| 5 | 42°00' N. lat. - 40°10' N. lat. | 20 fm depth contour - 100 fm line[6/] | | | | | |
| **See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | | |
| State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | | |
| 6 | **Minor slope rockfish[1/] & Darkblotched rockfish** | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 7 | **Pacific ocean perch** | 100 lb/ month | | | | | |
| 8 | **Sablefish** | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months | | | 300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months | | |
| 9 | **Thornyheads** | CLOSED | | | | | |
| 10 | **Dover sole** | 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 11 | **Arrowtooth flounder** | | | | | | |
| 12 | **Petrale sole** | | | | | | |
| 13 | **English sole** | | | | | | |
| 14 | **Starry flounder** | | | | | | |
| 15 | **Other flatfish[2/]** | | | | | | |
| 16 | **Whiting** | 300 lb/ month | | | | | |
| 17 | **Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish** | 200 lb/ month | | | | | |
| 18 | **Canary rockfish** | CLOSED | | | | | |
| 19 | **Yelloweye rockfish** | CLOSED | | | | | |
| 20 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 21 | North of 42° N. lat. | 5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/] | | | | | |
| 22 | 42° - 40°10' N. lat. | 6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/] | | | 7,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish[3/] | | |
| 23 | **Lingcod[4/]** | CLOSED | | 400 lb/ month | | | CLOSED |
| 24 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 25 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 26 | **Other Fish[5/]** | Not limited | | | | | |

TABLE 5 (North)

*Table 5 (North). Continued*

| | | |
|---|---|---|
| *27* | **PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)* | |
| *28* | North | **Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed. |
| *29* | **SALMON TROLL** | |
| *30* | North | Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook, plus 1 lingcod up to a trip limit of 10 lingcod, both within and outside of the RCA. This limit is within the 400 lb per month limit for lingcod, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above. |

TABLE 5 (North) con't

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

7/ The 125 fm line restriction is in place all year, except on days when the directed halibut fishery is open. On those days the 100 fm line restriction is in effect.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

**Table 5 (South) to Part 660, Subpart G -- 2009-2010 Trip Limits for Open Access Gears South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table** 061509

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[5/]:** | | | | | | |
| 1 | 40°10' - 34°27' N. lat. | 30 fm line[5/] - 150 fm line[5/] | | | | | |
| 2 | South of 34°27' N. lat. | 60 fm line[5/] - 150 fm line[5/] (also applies around islands) | | | | | |
| | **See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions.** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 3 | **Minor slope rockfish[1/] & Darkblotched rockfish** | | | | | | |
| 4 | 40°10' - 38° N. lat. | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 5 | South of 38° N. lat. | 10,000 lb/ 2 months | | | | | |
| 6 | **Splitnose** | 200 lb/ month | | | | | |
| 7 | **Sablefish** | | | | | | |
| 8 | 40°10' - 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months | | | 300 lb/ day, or 1 landing per week of up to 950 lb, not to exceed 2,750 lb/ 2 months | | |
| 9 | South of 36° N. lat. | 400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 8,000 lb/ 2 months | | | | | |
| 10 | **Thornyheads** | | | | | | |
| 11 | 40°10' - 34°27' N. lat. | CLOSED | | | | | |
| 12 | South of 34°27' N. lat. | 50 lb/ day, no more than 1,000 lb/ 2 months | | | | | |
| 13 | **Dover sole** | 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 14 | **Arrowtooth flounder** | | | | | | |
| 15 | **Petrale sole** | | | | | | |
| 16 | **English sole** | | | | | | |
| 17 | **Starry flounder** | | | | | | |
| 18 | **Other flatfish[2/]** | | | | | | |
| 19 | **Whiting** | 300 lb/ month | | | | | |
| 20 | **Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish** | | | | | | |
| 21 | 40°10' - 34°27' N. lat. | 300 lb/ 2 months | CLOSED | | 200 lb/ 2 months | | 300 lb/ 2 months |
| 22 | South of 34°27' N. lat. | 750 lb/ 2 months | | | 750 lb/ 2 months | | |
| 23 | **Canary rockfish** | CLOSED | | | | | |
| 24 | **Yelloweye rockfish** | CLOSED | | | | | |
| 25 | **Cowcod** | CLOSED | | | | | |
| 26 | **Bronzespotted rockfish** | CLOSED | | | | | |
| 27 | **Bocaccio** | | | | | | |
| 28 | 40°10' - 34°27' N. lat. | 200 lb/ 2 months | CLOSED | | 100 lb/ 2 months | | 200 lb/ 2 months |
| 29 | South of 34°27' N. lat. | 100 lb/ 2 months | | | 100 lb/ 2 months | | |

TABLE 5 (South)

*Table 5 (South). Continued*

TABLE 5 (South) con't

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 30 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 31 | Shallow nearshore | 600 lb/ 2 months | CLOSED | 800 lb/ 2 months | 900 lb/ 2 months | 800 lb/ 2 months | 600 lb/ 2 months |
| 32 | Deeper nearshore | | | | | | |
| 33 | 40°10' - 34°27' N. lat. | 700 lb/ 2 months | CLOSED | 700 lb/ 2 months | | 600 lb/ 2 months | 700 lb/ 2 months |
| 34 | South of 34°27' N. lat. | 500 lb/ 2 months | | 600 lb/ 2 months | | | |
| 35 | California scorpionfish | 600 lb/ 2 months | CLOSED | 600 lb/ 2 months | 1,200 lb/ 2 months | | |
| 36 | **Lingcod**[3/] | CLOSED | | 400 lb/ month | | | CLOSED |
| 37 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 38 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 39 | **Other Fish**[4/] **& Cabezon** | Not limited | | | | | |
| 40 | **RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL** | | | | | | |
| 41 | **NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:** | | | | | | |
| 42 | 40°10' - 38° N. lat. | 100 fm - modified 200 fm[6/] | 100 fm - 150 fm | | | | 100 fm - modified 200 fm[6/] |
| 43 | 38° - 34°27' N. lat. | 100 fm - 150 fm | | | | | |
| 44 | South of 34°27' N. lat. | 100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands | | | | | |
| 45 | | Groundfish: 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31). | | | | | |
| 46 | **PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)* | | | | | | |
| 47 | South | **Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | | | | | |

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

[FR Doc. E9–15840 Filed 6–30–09; 4:15 pm]
BILLING CODE 3510–22–C

# Proposed Rules

Federal Register
Vol. 74, No. 127
Monday, July 6, 2009

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–0609; Directorate Identifier 2009–NM–037–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–102, DHC–8–103, DHC–8–106, DHC–8–201, and DHC–8–202 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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

> During a puncture voltage test of the aluminum-loaded paint on an in-service DHC–8 aircraft, conducted to validate an SFAR 88 [Special Federal Aviation Regulation No. 88] related task, Bombardier Aerospace (BA) discovered that the top wing fuel tank skin between Yw171.20 and Yw261.00 was painted with a non-aluminized enamel coating * * *.
>
> With this type of paint application, it is possible that, in the worst case scenario, a lightning strike could puncture the wing skin and create an ignition source in the fuel tank.

Ignition sources inside fuel tanks, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by August 5, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Kyle Williams, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7347; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0609; Directorate Identifier 2009–NM–037–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

### Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–05, dated January 29, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During a puncture voltage test of the aluminum-loaded paint on an in-service DHC–8 aircraft, conducted to validate an SFAR 88 [Special Federal Aviation Regulation No. 88] related task, Bombardier Aerospace (BA) discovered that the top wing fuel tank skin between Yw171.20 and Yw261.00 was painted with a non-aluminized enamel coating due to a misinterpretation of the painting instructions in the Structural Repair Manual (SRM).
>
> With this type of paint application, it is possible that, in the worst case scenario, a lightning strike could puncture the wing skin and create an ignition source in the fuel tank.

Ignition sources inside fuel tanks, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. Required actions include performing a functional check of the dielectric properties of the fuel tank skin for aluminum-loaded primer and aluminum-loaded enamel coating. For airplanes on which the aluminum-loaded primer and aluminum-loaded enamel coating have been properly applied, the required actions include restoring the protective finish on the areas where the surface finish was removed. For airplanes on which the aluminum-loaded primer and aluminum-loaded enamel coating have not been applied or have not been properly applied, the required actions include stripping the affected wing skin surfaces to bare metal and applying alodine coating to those areas,

performing a detailed visual inspection of the stripped areas for any sign of corrosion or deterioration of the protective alodine coating and re-applying the protective alodine coating, and painting the affected wing skin surfaces with aluminum-loaded primer and aluminum-loaded enamel coating. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**Relevant Service Information**

Bombardier has issued Service Bulletin 8–57–46, Revision 'A,' dated February 6, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 22 products of U.S. registry. We also estimate that it would take about 24 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $42,240, or $1,920 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bombardier, Inc. (Formerly de Havilland, Inc.):** Docket No. FAA–2009–0609; Directorate Identifier 2009–NM–037–AD.

**Comments Due Date**

(a) We must receive comments by August 5, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier Model DHC–8–102, DHC–8–103, DHC–8–106, DHC–8–201, and DHC–8–202 series airplanes; certificated in any category; serial numbers 003 through 663 inclusive.

**Subject**

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

**Reason**

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

During a puncture voltage test of the aluminum-loaded paint on an in-service DHC–8 aircraft, conducted to validate an SFAR 88 [Special Federal Aviation Regulation No. 88] related task, Bombardier Aerospace (BA) discovered that the top wing fuel tank skin between Yw171.20 and Yw261.00 was painted with a non-aluminized enamel coating due to a misinterpretation of the painting instructions in the Structural Repair Manual (SRM).

With this type of paint application, it is possible that, in the worst case scenario, a lightning strike could puncture the wing skin and create an ignition source in the fuel tank.

Ignition sources inside fuel tanks, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. Required actions include performing a functional check of the dielectric properties of the fuel tank skin for aluminum-loaded primer and aluminum-loaded enamel coating. For airplanes on which the aluminum-loaded primer and aluminum-loaded enamel coating have been properly applied, the required actions include restoring the protective finish on the areas where the surface finish was removed. For airplanes on which the aluminum-loaded primer and aluminum-loaded enamel coating have not been applied or have not been properly applied, the required actions include stripping the affected wing skin surfaces to bare metal and applying alodine coating to those areas, performing a detailed visual inspection of the stripped areas for any sign of corrosion or deterioration of the protective alodine coating and re-applying the protective alodine coating, and painting the affected wing skin surfaces with aluminum-loaded primer and aluminum-loaded enamel coating.

**Actions and Compliance**

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

(1) For airplanes on which Bombardier Modification 8/0024 has not been done: Within 18 months after the effective date of this AD, perform a functional check of the dielectric properties of the fuel tank skin between Yw171.20 and Yw261.00 of the upper and lower wing for aluminum-loaded primer and aluminum-loaded enamel coating, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–46, Revision 'A', dated February 6, 2009.

(2) For airplanes on which Bombardier Modification 8/0024 has been done: Within 18 months after the effective date of this AD, perform a functional check of the dielectric properties of the fuel tank skin between Yw171.20 and Yw261.00 of the upper wing for aluminum-loaded primer and aluminum-loaded enamel coating, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–46, Revision 'A,' dated February 6, 2009.

(3) If the functional check required by paragraph (f)(1) or (f)(2) of this AD indicates that the aluminum-loaded primer and aluminum-loaded enamel coating have been properly applied, as defined in the Accomplishment Instructions of Bombardier Service Bulletin 8–57–46, Revision 'A,' dated February 6, 2009: Before further flight, restore the protective finish on the areas where the surface finish was removed for the functional check, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–46, Revision 'A,' dated February 6, 2009.

(4) If the functional check required by paragraph (f)(1) or (f)(2) of this AD indicates that the aluminum-loaded primer and aluminum-loaded enamel coating have not been applied or have not been properly applied, as defined in the Accomplishment Instructions of Bombardier Service Bulletin 8–57–46, Revision 'A,' dated February 6, 2009: Perform the actions required by paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this AD in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–57–46, Revision 'A,' dated February 6, 2009 ("the service bulletin").

(i) Before further flight, strip the affected wing skin surfaces to bare metal and apply alodine coating to those areas in accordance with the service bulletin.

(ii) Within 90 flight hours after performing the actions required by paragraph (f)(4)(i) of this AD, and thereafter at intervals not to exceed 90 flight hours: Perform a detailed visual inspection of the stripped areas for any sign of corrosion or deterioration of the protective alodine coating, and re-apply the protective alodine coating, in accordance with the service bulletin.

(iii) Within 3 months after performing the actions required by paragraph (f)(1) or (f)(2) of this AD, as applicable: Paint the affected wing skin surfaces with aluminum-loaded primer and aluminum-loaded enamel coating in accordance with the service bulletin.

(5) Accomplishment of the actions required by paragraph (f)(1) or (f)(2) of this AD, as applicable, before the effective date of this AD in accordance with Bombardier Service Bulletin 8–57–46, dated September 29, 2008, is acceptable for compliance with the corresponding requirements of this AD.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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: Kyle Williams, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7347; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

**Related Information**

(h) Refer to Canadian Airworthiness Directive CF–2009–05, dated January 29, 2009, and Bombardier Service Bulletin 8–57–46, Revision 'A,' dated February 6, 2009, for related information.

Issued in Renton, Washington, on June 25, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–15810 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–0608; Directorate Identifier 2008–NM–215–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing 747–200C and –200F Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Boeing 747–200C and –200F series airplanes. This proposed AD would require a high frequency eddy current inspection for cracks of certain fastener holes, and corrective action if necessary. This proposed AD would also require repetitive replacements of the upper chords, straps (or angles), and radius fillers of certain upper deck floor beams, and, for any replacement that is done, detailed and open-hole HFEC inspections for cracks of the modified upper deck floor beams, and corrective actions if necessary. This proposed AD results from a report from the manufacturer that the accomplishment of certain existing inspections, repairs, and modifications is not adequate to ensure the structural integrity of the affected 7075 series aluminum alloy upper deck floor beam upper chords on airplanes that have exceeded certain thresholds. We are proposing this AD to prevent cracking of the upper chords and straps (or angles) of the floor beams, which could lead to failure of the floor beams and consequent loss of controllability, rapid decompression, and loss of structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by August 20, 2009.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 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*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0608; Directorate Identifier 2008–NM–215–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

We have received reports that operators have found cracks in the upper chords and straps (or angles) of the upper deck floor beams. The airplanes had accumulated between 16,264 and 23,561 total flight cycles. In addition, we received a report from the manufacturer that the accomplishment of certain existing inspections, repairs, and modifications is not adequate to ensure the structural integrity of the affected 7075 series aluminum alloy upper deck floor beam upper chords on airplanes that have exceeded certain thresholds. Cracks in the upper chords or straps (or angles) of an upper deck floor beam that are not found and repaired could become large and fully sever the floor beam. A severed floor beam can lead to large deflection or deformation of the floor and of the adjacent body skin, frames, and stringers, and could result in damage and unintended inputs to the wire bundles and control cables routed through the floor beams which could affect airplane controllability. If not corrected, adjacent severed floor beams could result in consequent loss of controllability, rapid decompression, and loss of structural integrity of the airplane.

### Related ADs

As a result of these reports of cracks, Boeing issued Alert Service Bulletin 747–53A2439, dated July 5, 2001. Boeing Alert Service Bulletin 747–53A2439 provides procedures for an open-hole high frequency eddy current (HFEC) or surface HFEC inspection to find fatigue cracking in the upper chord of the upper deck floor beams, and applicable related investigative and corrective actions. The actions in Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, are required by AD 2006–08–02, amendment 39–14556 (71 FR 18618, April 12, 2006).

In addition, Boeing has received many reports of cracks in the upper chords and straps (or angles) of the affected floor beams at the fastener locations where the upper chords attach to the body frames. As a result of these reports of cracks, Boeing issued Alert Service Bulletin 747–53A2420, dated March 26, 1998; and Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001. Boeing Alert Service Bulletin 747–53A2420 provides procedures for detailed and open-hole HFEC

inspections of the upper chords of the floor beams, and applicable corrective actions. Boeing Alert Service Bulletin 747–53A2429 provides procedures for detailed and open-hole HFEC inspections and modification of the upper chords of the floor beams, and applicable corrective actions. The actions in Boeing Alert Service Bulletin 747–53A2420, dated March 26, 1998; and Boeing Alert Service Bulletin 747–53A2429, dated March 22, 2001, are required by AD 2005–07–21, amendment 39–14046 (70 FR 18277, April 11, 2005).

To preclude widespread fatigue damage, we have determined that we should not rely solely on the inspections required by AD 2006–08–02 and AD 2005–07–21 indefinitely. We have determined to mandate a modification of the floor beams and related investigative actions in this separate AD action, rather than superseding the related ADs.

**Relevant Service Information**

We have reviewed Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008. This service bulletin describes procedures for removing the upper chords from the upper deck floor beams at stations (STA) 340 to 440 inclusive, 500, and 520, an open-hole HFEC inspection for cracks of all the fastener holes accessed for upper chord removal, and if any cracking is found, contacting Boeing for repair information. and doing the repair. This service bulletin also describes procedures for fabricating and installing new upper chords and straps (or angles) of the upper deck floor beams at STA 340 to 440 inclusive, 500, and 520 with new upper chords, straps (or angles), and radius fillers.

For any airplane on which a replacement is done, the service bulletin recommends detailed and HFEC inspections for cracks of the modified upper deck floor beams, and for airplanes on which any cracking is found, contacting Boeing for repair instructions and repairing if necessary. For all airplanes, this service bulletin specifies to do detailed and HFEC inspections for cracks of the upper deck floor beams within 15,000 flight cycles after the replacement is done, or within 1,500 flight cycles, whichever occurs later. This service bulletin also specifies replacing the upper chords and straps (or angles) of the upper deck floor beams within 6,000 flight cycles after doing the detailed and HFEC inspections. The service bulletin also specifies repetitive detailed and HFEC inspections within 15,000 flight cycles after the upper chord replacement modification.

Boeing Alert Service Bulletin 747–53A2696 refers to Boeing Alert Service Bulletin 747–53A2429, Revision 2, dated October 16, 2008; and Boeing Alert Service Bulletin 747–53A2439, Revision 2, dated July 17, 2008; as additional sources of information for doing the post-modification inspections.

**FAA's Determination and Requirements of This Proposed AD**

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

**Differences Between the Proposed AD and the Service Bulletin**

Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

**Costs of Compliance**

We estimate that this proposed AD would affect 25 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

| Work hours | Average labor rate per hour | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| 663 ..... | $80 | None ..... | $53,040 per inspection/replacement cycle ..... | 25 | $1,326,000 per inspection/replacement 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 determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

Boeing: Docket No. FAA–2009–0608; Directorate Identifier 2008–NM–215–AD.

**Comments Due Date**

(a) We must receive comments by August 20, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all Boeing Model 747–200C and –200F series airplanes, certificated in any category.

**Subject**

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

**Unsafe Condition**

(e) This AD results from a report from the manufacturer that the accomplishment of certain existing inspections, repairs, and modifications is not adequate to ensure the structural integrity of the affected 7075 series aluminum alloy upper deck floor beam upper chords on airplanes that have exceeded certain thresholds. We are issuing this AD to prevent cracking of the upper chords and straps (or angles) of the floor beams, which could lead to failure of the floor beams and consequent loss of controllability, rapid decompression, and loss of structural integrity of the airplane.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Initial Inspection and Replacement**

(g) Before the accumulation of 21,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later: Do an open hole high frequency eddy current (HFEC) inspection of all the fastener holes accessed for upper chord removal for cracks, and replace upper chords, straps (or angles), and radius fillers of the upper deck floor beams, in accordance with the Accomplishment Instructions of Boeing . Alert Service Bulletin 747–53A2696, dated October 16, 2008.

**Repetitive Replacements and Post-Replacement Inspections**

(h) Within 15,000 flight cycles after doing the replacement required by paragraph (g) of this AD, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later: Do detailed and HFEC inspections for cracks of the modified upper deck floor beams, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008. Within 6,000 flight cycles after doing the detailed and HFEC inspections, do the replacement specified in paragraph (g) of this AD. Repeat the post-replacement inspections and replacement at the applicable times specified in paragraph 1.E. of Boeing Alert Service Bulletin 747–53A2696, dated October 16, 2008.

**Repair of Cracks**

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

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Airframe Branch, ANM–120S, FAA, Seattle ACO, 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, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on June 25, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–15811 Filed 7–2–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–0055; Directorate Identifier 2008–NM–194–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300 B4–103, A300 B4–203, and A300 B4–2C Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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

**SUMMARY:** We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88). * * * Under this regulation, all holders of type certificates for passenger transport aircraft * * * are required to conduct a design review against explosion risks.

One of the consequences of the Airbus design review is the modification of the fuel pump wiring to provide protection against chafing of the fuel pump cables. This condition, if not corrected, could result in short circuits leading to fuel pump failure, arcing, and possible fuel tank explosion.

[A previous AD] was issued to require * * * modification [of the fuel pump against short circuit] * * *. More recently, an additional modification of the electrical wiring of the outer fuel pump and the landing lights on the left (LH) and right (RH) sides has been introduced * * *.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 31, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0055; Directorate Identifier 2008–NM–194–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

**Discussion**

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on February 13, 2009 (72 FR 7202). That earlier NPRM proposed to supersede AD 2007–18–02, amendment 39–15182 (74 FR 49175, August 28, 2007), to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, Airbus has revised service information to introduce additional mechanical protection to prevent the fuel pump or landing light wiring from chafing. Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009, provides procedures for installing new splicing on the wires, a new cable type, shrink sleeve installation on the new wiring, and an additional braided conduit sleeve (Halar), as applicable, for the fuel pumps and landing lights.

We referred to Airbus Service Bulletins A300–24–0103, Revision 01, dated January 11, 2007; and Revision 02, dated April 4, 2008; as the appropriate sources of service information for doing the actions proposed in the original NPRM. More work is necessary for airplanes modified in accordance with either of those two service bulletins. We have revised paragraphs (c), (f), and (g) of this proposed AD to refer to Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009.

We have revised the Costs of Compliance paragraph of this supplemental NPRM to specify the costs of the requirements that are retained from the existing AD and the costs of the new requirements of this supplemental NPRM.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0188, dated October 10, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products.

You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Airbus has issued Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

The additional actions in the revised service information described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed 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 proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry.

The actions that are required by AD 2007–18–02 and retained in this proposed AD take about 72 work-hours per product, at an average labor rate of $80 per work hour. Required parts would cost about $5,050 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, the estimated cost of the currently required actions is $140,530, or $10,810 per product.

We estimate that it would take about 42 work-hours per product to comply with the new basic requirements of this

proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $4,100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $96,980, or $7,460 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Amendment 39–15182 (72 FR 49175, August 28, 2007) and adding the following new AD:

**Airbus:** Docket No. FAA–2009–0055; Directorate Identifier 2008–NM–194–AD.

**Comments Due Date**

(a) We must receive comments by July 31, 2009.

**Affected ADs**

(b) The proposed AD supersedes AD 2007–18–02, Amendment 39–15182.

**Applicability**

(c) This AD applies to Airbus Model A300 B2–1C, A300 B2–203, A300 B2K–3C, A300 B4–103, A300 B4–203, and A300 B4–2C airplanes, certificated in any category, as identified in Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009.

**Subject**

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

**Reason**

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

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88). Subsequently, the Joint Aviation Authorities (JAA) recommended the application of a similar regulation to the National Aviation Authorities (NAA) of its member countries. Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 3,402 kg (7,500 lbs) or more, which have received their certification since 01 January 1958, are required to conduct a design review against explosion.

One of the consequences of the Airbus design review is the modification of the fuel pump wiring to provide protection against chafing of the fuel pump cables. This condition, if not corrected, could result in short circuits leading to fuel pump failure, arcing, and possible fuel tank explosion.

EASA (European Aviation Safety Agency) AD 2007–0066 [which corresponds to FAA AD 2007–18–02] was issued to require this modification in accordance with Airbus SB [service bulletin] A300–24–0103, Revision 01. More recently, an additional modification of the electrical wiring of the outer fuel pump and the landing lights on the left (LH) and right (RH) side has been introduced in Revision 02 of Airbus SB A300–24–0103. For the reason described above, this new AD retains the requirements of EASA AD 2007–0066, which is superseded, and requires additional work.

The additional modification will provide additional protection from chafing and will prevent intermittent operation of the fuel pump and landing lights, as well as the failure of the power supply. The modification of the wiring of the outer fuel pump and the landing light on the LH side route 1P harness and RH side route 2P harness includes additional mechanical protection that includes procedures for installing new splicing on the wires, a new cable type, shrink sleeve installation on the new wiring, and an additional braided conduit sleeve (Halar), as applicable, for the fuel pumps and the landing lights.

**Restatement of Requirements of AD 2007–18–02 With New Service Bulletin**

(f) Within 31 months after October 2, 2007 (the effective date of AD 2007–18–02), unless already done, modify the inner and outer fuel pump wiring, route 1P and 2P harnesses in the LH (left-hand) wing and in the RH (right-hand) wing, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–24–0103, Revision 01, dated January 11, 2007; or Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009. As of the effective date of this AD, Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009, must be used for the actions required by this paragraph. Actions done before October 2, 2007, in accordance with Airbus Service Bulletin A300–24–0103, dated March 15, 2006, for airplanes under configuration 01 as defined in Airbus Service Bulletin A300–24–0103, Revision 01, dated January 11, 2007; Revision 02, dated April 4, 2008; or Revision 03, dated February 18, 2009; are acceptable for compliance with the requirements of this paragraph.

**New Requirements of This AD: Actions and Compliance**

(g) Unless already done, within 12 months after the effective date of this AD, modify the wiring of the outer fuel pump and the landing light on the LH side route 1P harness and RH side route 2P harness. in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: The MCAI specifies doing a modification in accordance with Airbus Mandatory Service Bulletin A300–24–0103, Revision 02, dated April 4, 2008. However, this AD requires doing additional actions that are specified in Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009. The MCAI has not yet been revised to require

the additional actions. We have coordinated this difference with EASA.

**Other FAA AD Provisions**

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

**Related Information**

(i) Refer to MCAI EASA Airworthiness Directive 2008–0188, dated October 10, 2008; Airbus Service Bulletin A300–24–0103, Revision 01, dated January 11, 2007; and Airbus Mandatory Service Bulletin A300–24–0103, Revision 03, dated February 18, 2009; for related information.

Issued in Renton, Washington, on June 25, 2009.

**Stephen P. Boyd,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–15812 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2009–0231; Airspace Docket No. 09–AAL–6]**

## Proposed Establishment of Class E Airspace; Chuathbaluk, AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Chuathbaluk, AK. One Standard Instrument Approach Procedure (SIAP) is being developed for the Chuathbaluk Airport at Chuathbaluk, AK. Adoption of this proposal would result in creating Class E airspace upward from 700 feet (ft.) above the surface at the Chuathbaluk Airport, Chuathbaluk, AK.

**DATES:** Comments must be received on or before August 20, 2009.

**ADDRESSES:** Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0231/ Airspace Docket No. 09–AAL–6, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

**FOR FURTHER INFORMATION CONTACT:** Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2009–0231/Airspace Docket No. 08–AAL–6." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of Notice of Proposed Rulemakings (NPRMs)**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara/index.html*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish Class E airspace at the Chuathbaluk Airport, in Chuathbaluk, AK. The intended effect of this proposal is to create Class E airspace upward from 700 ft. above the surface to contain Instrument Flight Rules (IFR) operations at the Chuathbaluk Airport, Chuathbaluk, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has created one new SIAP for the Chuathbaluk Airport. The SIAP is the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 9, Original. Class E controlled airspace extending upward from 700 ft. above the surface in the Chuathbaluk Airport area would be established by this action. The proposed airspace is sufficient in size to contain aircraft executing this instrument procedure at the Chuathbaluk Airport, Chuathbaluk, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at the Chuathbaluk Airport, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

**§ 71.1 [Amended]**

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

* * * * *

*Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AAL AK E5 Chuathbaluk, AK [New]**

Chuathbaluk, Chuathbaluk Airport, AK
(Lat. 61°34′44″ N., long. 159°12′56″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Chuathbaluk Airport, AK, and within 3.5 miles either side of the 286° bearing from the Chuathbaluk Airport, AK, extending from the 6.5 mile radius, to 10.3 miles west of the Chuathbaluk, Airport, AK.

* * * * *

Issued in Anchorage, AK, on June 24, 2009.

**Anthony M. Wylie,**

*Manager, Alaska Flight Services Information Area Group.*

[FR Doc. E9–15877 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2009–0474]**

**RIN 1625–AA00**

## Safety Zone; Parker U.S. Open Nationals; Parker, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a safety zone upon the navigable waters of Lake Moovalya region on the lower Colorado River in support of the Parker U.S. Open Nationals. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 5, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0474 using any one of the following methods:

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

(2) Fax: 202–493–2251.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail call Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

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

*Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0474), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert "USCG–2009–0474" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert "USCG–2009–0474" in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

**Privacy Act**

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

**Public Meeting**

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

**Background and Purpose**

This temporary safety zone is established in support of the Parker U.S. Open Nationals, a marine event that includes participating vessels along an established and marked course upon the Colorado River in Parker, AZ. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the race and is also necessary to protect other vessels and users of the waterway.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish a safety zone that will be enforced from 8 a.m. to 6 p.m. on October 9, 2009 through October 11, 2009. The limits of this temporary safety zone are as follows: Starting at the Bluewater Marina in Parker, AZ, extending approximately 10 miles to La Paz County Park. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Parker U.S. Open Nationals and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**Regulatory Analyses**

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

*Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The safety zone is of a limited duration, ten hours per day for a period of three days, and is limited to a relatively small geographic area.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The safety zone will affect the following entities, some of which may be small entities: The owners and operators of pleasure craft engaged in recreational activities and sightseeing. This safety zone will not have a significant economic impact on a substantial number of small entities because: The safety zone is limited in scope and duration, as it is in effect for ten hours per day for a period of three days.

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

*Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, call or e-mail Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

**Collection of Information**

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

*Federalism*

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

*Unfunded Mandates Reform Act*

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

*Taking of Private Property*

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

*Civil Justice Reform*

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

*Protection of Children*

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

*Indian Tribal Governments*

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

*Energy Effects*

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

*Technical Standards*

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

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

*Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone under figure 2–1, paragraph (34)(g), of the Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary zone § 165.T11–205 to read as follows:

**§ 165.T11–205 Safety zone; Parker U.S. Open Nationals; Parker, AZ.**

(a) *Location*. The limits of this temporary safety zone are as follows: Bluewater Marina in Parker, AZ, extending approximately 10 miles to La Paz County Park.

(b) *Enforcement Period*. This section will be enforced from 8 a.m. to 6 p.m. on October 9, 2009 through October 11, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions*. The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary,

and local, state, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

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

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

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

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

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

Dated: June 16, 2009.

**D.L. Leblanc,**

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

[FR Doc. E9–15727 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51, 60, 61 and 63

**[EPA–HQ–OAR–2008–0531; FRL–8926–7]**

**RIN 2060–AP23**

## Restructuring of the Stationary Source Audit Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; announcement of extending comment period.

**SUMMARY:** EPA is extending the comment period for the proposed rule entitled "Restructuring of the Stationary Source Audit Program" that was proposed in the **Federal Register** on June 16, 2009. The 30-day comment period in the proposed rule is scheduled to end July 16, 2009. The extended comment period will close on August 5, 2009. EPA is extending the comment period because of a request we received in a timely manner.

**DATES:** *Comments.* The comment period for the proposed rule published June 16, 2009 (74 FR 28451), is extended. Comments must be received on August 5, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2008–0531, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* Send your comments via electronic mail to *a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Restructuring of the Stationary Source Audit Program, Environmental Protection Agency, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, EPA Headquarters Library, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0531. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document or visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Methods for Restructuring of the Stationary Source Audit Program Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room/Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the proposed rule, contact Ms. Candace Sorrell, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1064; fax number; (919) 541–0516; e-mail address: *sorrell.candace@epa.gov*

**SUPPLEMENTARY INFORMATION:**

### A. What Should I Consider As I Prepare My Comments for EPA?

Do not submit information containing CBI to EPA through *http://www.regulqtions.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2008–0531. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on 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.

**B. Where Can I Obtain a Copy of This Action and Other Related Information?**

In addition to being available in the docket, an electronic copy of the proposed amendments is also available on the Worldwide Web (*http://www.epa.gov/ttn/*) through the Technology Transfer Network (TTN). Following signature, a copy of the proposed amendment will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Dated: June 26, 2009.

**Jennifer N. Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. E9–15805 Filed 7–2–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R03–OAR–2009–0033; FRL–8925–8]**

### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects and clarifies an error in the preamble language of the proposal to approve a West Virginia State Implementation Plan (SIP) revision that addresses the requirements of EPA's Clean Air Interstate Rule (CAIR), and recodifies and revises provisions pertaining to sources that are subject to the nitrogen oxides ($NO_X$) SIP Call.

**DATES:** Written comments must be received on or before July 13, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0033 by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov*.

C. *Mail:* EPA–R03–OAR–2009–0033, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R03–OAR–2009–0033. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, at (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov*.

**SUPPLEMENTARY INFORMATION:** On June 11, 2009 (74 FR 27731), EPA published a notice of proposed rulemaking announcing the approval of West Virginia's CAIR rules and recodification and revision of provisions pertaining to internal combustion engines and cement kilns that are subject to the NOx SIP Call. In the preamble of this document, EPA inadvertently printed the incorrect number of allowances in West Virginia's Compliance Supplement Pool (CSP). This action corrects the number of allowances in the West Virginia CSP from 4,898 allowances to 16,929 allowances.

**Correction**

In rule document E9–13725, on page 27736, the first sentence of the third paragraph in the first column should read: "West Virginia's compliance supplement pool is comprised of 16,929 allowances."

**Statutory and Executive Order Reviews**

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely proposes to approve 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 Clean Air Act; 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 proposed approval of West Virginia's SIP revision to meet the requirements of CAIR 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.

Dated: June 24, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. E9–15794 Filed 7–2–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260 and 261

**[EPA–HQ–RCRA–2009–0315; FRL–8926–4 ]**

**RIN 2050–AG31**

### Definition of Solid Waste Public Meeting; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Public Meeting and Request for Comments; Extension of comment period.

**SUMMARY:** EPA is announcing an extension to the comment period for the public meeting notice published in the **Federal Register** on May 27, 2009 regarding the Agency's recent regulation on the definition of solid waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The comment period is being extended 30 days to August 13, 2009. EPA is currently reviewing a petition filed with the Administrator under RCRA section 7004(a) requesting that the Agency reconsider and repeal the recently promulgated revisions to the definition of solid waste for hazardous secondary materials being reclaimed, and is soliciting comments and information to assist the agency in evaluating the petition.

**DATES:** Persons may submit written or electronic comments by August 13, 2009. The administrative record of the meeting will remain open for submissions until August 13, 2009.

**ADDRESSES:** Written comments. Submit your written comments, identified by Docket ID No. EPA–HQ–RCRA 2009–0315 by one of the following methods:

• *http://www.regulations.gov:* Follow the online instructions for submitting comments.

• *E-mail:* Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2009–0315.

• *Fax:* Fax comments to: 202–566–9744, Attention Docket ID No. EPA–HQ–RCRA 2009–0315

• *Mail:* Send comments to: OSWER Docket, EPA Docket Center, Mail Code 2822–T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington D.C. 20460, Attention Docket ID No. EPA–HQ–RCRA–2009–0315.

*Instructions:* EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OSWER Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is 202–566–0270.

**FOR FURTHER INFORMATION CONTACT:** For more detailed information on the definition of solid waste regulations, contact Tracy Atagi, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460, at (703) 308–8672 (*atagi.tracy@epa.gov*). For information on specific aspects of the public meeting, contact Amanda Geldard, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington DC 20460, at (703) 347–8975, (*geldard.amanda@epa.gov*).

Dated: June 29, 2009.

**Matt Hale,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. E9–15807 Filed 7–2–09; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 090508900–9901–01]**

**RIN 0648–AX75**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Red Snapper Closure

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

**ACTION:** Proposed temporary rule; request for comments.

**SUMMARY:** This proposed temporary rule would implement interim measures to establish a closure of the commercial and recreational fisheries for red snapper in the South Atlantic as requested by the South Atlantic Fishery Management Council (Council). The intended effect is to reduce overfishing of red snapper while permanent management measures are developed in Amendment 17 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 17) to end overfishing of red snapper.

**DATES:** Written comments must be received no later than 5 p.m., eastern time, on August 5, 2009.

**ADDRESSES:** You may submit comments on the proposed rule, identified by "0648–AX75" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Fax: 727–824–5308; Attention: Karla Gore.
- Mail: Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov*, enter "NOAA-NMFS–2008–0089" in the keyword search, then select "Send a Comment or Submission." 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.

Copies of documents supporting this proposed rule, which includes an environmental assessment and an initial regulatory flexibility analysis (IRFA), may be obtained from Karla Gore, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, telephone: 727–551–5753, fax: 727–824–5308, e-mail: *karla.gore@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

### Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on an continuing basis, the optimum yield for federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protected marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to specify their strategy to rebuild overfished stocks to a sustainable level within a certain time frame, and to minimize bycatch and bycatch mortality to the extent practicable. Amendment 17, currently under development, will include management measures to end overfishing of red snapper and rebuild the red snapper stock. However because Amendment 17, if approved, would not likely be implemented until early 2010, this temporary rule contains management measures intended to address overfishing of red snapper on an interim basis.

The Council was notified in July 2008 that red snapper are overfished and undergoing overfishing. The status of red snapper was determined by the Southeast Data Assessment and Review process in 2008. The Council's Scientific and Statistical Committee has determined overfished and overfishing determinations for South Atlantic red snapper are based on the best available scientific information.

At the March 2009 Council meeting in Jekyll Island, Georgia, the Council voted (7–6) to proceed with an interim rule for red snapper. On March 23, 2009, the Council submitted a letter to NMFS requesting interim measures to prohibit harvest and possession of red snapper pursuant to Section 305(c) of the Magnuson-Stevens Act.

### Management Measures Proposed by This Temporary Rule

*Prohibition on Harvest, Possession, or Sale of Red Snapper*

The proposed temporary rule would establish a closure of the commercial and recreational fisheries for red snapper in the South Atlantic exclusive economic zone (EEZ)(180 days with the possibility of extending for another 186 days). During the closure, the harvest, possession, or sale of red snapper in or from the South Atlantic EEZ would be prohibited for both recreational and commercial fishermen. For a person who has been issued a valid commercial vessel permit or charter vessel/headboat permit for South Atlantic snapper-grouper, the provisions of the proposed temporary rule would apply regardless of where the red snapper are harvested (i.e. state or Federal waters).

### Future Action

NMFS believes that this proposed rule is necessary to reduce overfishing of red snapper in the South Atlantic. NMFS will consider all public comments received on this proposed rule in determining whether to proceed with a final rule and, if so, whether any revisions would be appropriate in the final rule. If NMFS issues a final rule, it would be effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. The final rule could be extended for an additional 186 days, provided that the public has had an opportunity to comment on the rule and provided that the Council is actively preparing a plan amendment or proposed regulations to address this overfishing issue on a permanent basis. The Council is preparing an FMP amendment to address this issue on a permanent basis.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the South Atlantic Snapper-

Grouper Fishery Management Plan, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, for this proposed temporary rule. The IRFA describes the economic impact this proposed temporary rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows.

The purpose of this proposed temporary rule is to reduce red snapper overfishing while long-term management measures are developed and implemented. The Magnuson-Stevens Act provides the statutory basis for this proposed temporary rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This proposed temporary rule would be expected to directly impact commercial fishing and for-hire operators. The Small Business Administration has established size criteria for all major industry sectors in the U.S. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For a for-hire business, the other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2003–2007, an average of 220 vessels per year were permitted to operate in the commercial snapper-grouper fishery and recorded landings of red snapper, ranging from a high of 236 vessels in 2003 to a low of 206 vessels in 2006. Total dockside revenues from all species on all recorded trips by these vessels averaged $9.78 million (2007 dollars) per year over this period, resulting in a per-vessel average of approximately $44,500. The highest average revenue per vessel during this period occurred in 2007 at approximately $54,600. Based on these average revenue figures, it is determined, for the purpose of this assessment, that all commercial vessels that would be affected by this proposed temporary rule are small entities.

The harvest of red snapper in the EEZ by for-hire vessels requires a snapper-grouper charter vessel/headboat permit. From 2003–2007, an average of 1,635 vessels per year were permitted to operate in the snapper-grouper for-hire fishery, of which 82 vessels are estimated to have operated as headboats. The for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. The annual average gross revenue for charter vessels is estimated to range from approximately $80,000-$109,000 (2007 dollars) for Florida vessels, $94,000-$115,000 for North Carolina vessels, $88,000-$107,000 for Georgia vessels, and $41,000-$50,000 for South Carolina vessels. For headboats, the appropriate estimates are $220,000-$468,000 for Florida vessels, and $193,000-$410,000 for vessels in the other states. Based on these average revenue figures, it is determined, for the purpose of this assessment, that all for-hire businesses that would be affected by this action are small entities. The number of for-hire vessels that would be expected to be affected by this proposed interim rule is discussed below.

Some fleet activity may exist in both the commercial and for-hire snapper-grouper sectors, but the extent of such is unknown, and all vessels are treated as independent entities in this assessment.

This proposed temporary rule would not establish any new reporting, record-keeping, or other compliance requirements.

This proposed temporary rule would be expected to result in a short-term reduction in net operating revenues (NOR), which are trip revenues minus non-labor trip costs, to the commercial snapper grouper sector by approximately $120,000 (2007 dollars). This reduction in NOR would be expected to increase to a cumulative total of $289,000 if the proposed prohibition is extended an additional 186 days, resulting in a prohibition for one full year. An average of 220 commercial vessels per year have recorded landings of red snapper. This proposed temporary rule would be expected to result in an average reduction in NOR of approximately $450 per vessel for the proposed 180-day prohibition, and approximately $1,300 per vessel if the prohibition is extended an additional 186 days. Although NOR are not directly comparable to dock-side revenues, the average annual dock-side revenues from all species harvested for vessels with recorded red snapper harvests is estimated to be approximately $44,500.

For the headboat sector. this proposed temporary rule would be expected to result in a short-term reduction in NOR by a maximum of approximately $1.76 million (2008 dollars). This reduction in NOR would be expected to increase to a cumulative maximum total of $3.96 million if the proposed prohibition is extended an additional 186 days. Although 82 vessels are estimated to operate in the snapper-grouper fishery, red snapper target activity is believed to be concentrated in Georgia and northeast Florida (Mayport, FL, south through Cape Canaveral, FL) where 16 headboats operate. Approximately 70 percent of all red snapper harvested (pounds) by the headboat sector from 2003–2007 were harvested by anglers fishing from this area. The expected maximum reduction in NOR is based on the assumption that all angler trips on these 16 vessels during the respective period target red snapper and equals the change in NOR if all these trips were lost. This is considered a worst-case scenario. An unknown number of these trips would likely not target red snapper (many anglers fish to catch whatever species is available) and red snapper has historically comprised only 3 percent of the total number of fish harvested and 11 percent of the total number of pounds of fish harvested by vessels in this area. As a result, it is unlikely that all or necessarily a large portion of these trips would be canceled. Available data, however, do not support the identification of more precise estimates of the number of red snapper target trips that would be expected to be cancelled, and the projected estimates of the expected change in NOR should be considered extreme upper bounds.

Because of the uncertainty associated with the number of affected vessels and the number of trips that may be cancelled, the effective average reduction in NOR per headboat vessel is difficult to project. Under the worst-case scenario, the cancellation of all angler trips on Georgia and northeast Florida vessels (16) would result in a 100–percent loss of NOR for these vessels during this period of time (180 days), or approximately 44 percent of annual total NOR ($1.76 million/$3.96 million). However, if the upper bound of effects ($1.76 million) is assumed to encompass trip cancellation on vessels outside this area, it is unknown how many additional vessels should be included in the analysis. The South Carolina headboat fleet, which contains 14 vessels, accounts for the next highest red snapper harvests after the Georgia

and northeast Florida fleets. If the maximum expected reduction in NOR is spread over all 30 vessels in these areas, the expected reduction in NOR would be less than 100 percent of the total annual NOR, and the average expected reduction in NOR per vessel would be approximately $58,700. This would increase to a total of approximately $132,000 under an extension of the proposed prohibition for an additional 186 days. Although NOR are not directly comparable to gross revenues from for-hire fees, the average annual gross revenues from for-hire fees is estimated to be approximately $220,000-$468,000 for Florida headboats and $193,000-$410,000 for headboats in the other states.

For the charter sector, the proposed temporary rule would be expected to result in a short-term reduction in NOR of approximately $247,000 (2008 dollars) and increase to a cumulative total of approximately $427,000 if the proposed prohibition is extended an additional 186 days. It should be noted that, although target data are available for the charter sector, trip cancellation data are not available, and the analysis assumes, similar to the analysis of the headboat sector, that all charter vessel red snapper target effort will be cancelled. As in the headboat sector, the cancellation of all trips that would have targeted red snapper in the charter sector is unlikely to occur and, as a result, the estimates of the expected change in NOR in the charter sector likely overestimate the actual reduction that would occur.

Vessel-level data are unavailable for the charter sector. As a result, it is not known how many vessels would be affected by the proposed temporary rule. An estimated 1,553 charter vessels are permitted to operate in the snapper-grouper fishery, which allows these vessels to harvest red snapper (1,635 total vessels with snapper-grouper charter vessel/headboat permits, of which 82 are estimated to operate as headboats). If the proportion of charter vessels that would be expected to be affected by the proposed temporary rule is assumed to equal the proportion of headboats constituting the core red snapper vessels (16 vessels out of 82 headboats, or 19.5 percent), then approximately 303 charter vessels (19.5 percent of 1,553 vessels) would be expected to be affected. This would result in an average reduction in NOR of approximately $800 per vessel, which would increase to a total of approximately $1,400 under an extension of the proposed prohibition for an additional 186 days. The annual average gross revenue per charter vessel from charter fees is estimated to range from approximately $80,000-$109,000 (2007 dollars) for Florida vessels, $94,000-$115,000 for North Carolina vessels, $88,000-$107,000 for Georgia vessels, and $41,000-$50,000 for South Carolina vessels.

Although all the effects described above are short-term in nature, due to the limited duration of the proposed temporary rule, continued long-term unquantified adverse economic effects could occur at the individual vessel and fishery level if the short-term effects result in business failure.

Three alternatives, including the status quo, were considered for this proposed temporary rule. The proposed action would prohibit the harvest (retention) and sale of red snapper in the South Atlantic commercial and recreational fisheries for 180 days, with extension potential for another 186 days. The first alternative to the proposed action, the status quo, would not prohibit the harvest and sale of red snapper, would not reduce overfishing of red snapper while long-term management measures are developed and implemented, and would not achieve NMFS's objective.

The second alternative to the proposed prohibition on the harvest and sale of red snapper would only establish a 4-month seasonal closure. A 4-month seasonal closure could not be extended and would not be expected to allow sufficient time for the development and implementation of long-term management measures to protect red snapper. As a result, this alternative would not achieve NMFS's objective.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 29, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.35, paragraph (l) is added to read as follows:

**§ 622.35 Atlantic EEZ seasonal and/or area closures.**

* * * * *

(l) *Closure of the commercial and recreational fisheries for red snapper.* The commercial and recreational fisheries for red snapper in the South Atlantic EEZ are closed. During the closure, all fishing for red snapper is prohibited, and possession or sale of red snapper, harvested during the closure, in or from the South Atlantic EEZ is prohibited. For a person aboard a vessel for which a valid Federal commercial vessel permit or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the provisions of this closure apply regardless of whether the red snapper were harvested or possessed in state or Federal waters.

[FR Doc. E9–15845 Filed 7–2–09; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 74, No. 127
Monday, July 6, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2009–0016]**

### Notice of Request for a New Information Collection (Industry Responses to Noncompliance Records)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a new information collection concerning the responses by official establishments and plants to noncompliance records.

**DATES:** Comments on this notice must be received on or before September 4, 2009.

**ADDRESSES:** FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.
- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue, SW., Room 2534, South Agriculture Building, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0016. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

*Docket:* For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

*For Additional Information:* Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 3532, South Building, Washington, DC 20250, (202) 720–0345.

**SUPPLEMENTARY INFORMATION:**

*Title:* Industry Responses to Noncompliance Records.

*Type of Request:* New information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS is requesting a new information collection addressing paperwork requirements related to the collection of information for official meat or poultry establishment and egg products plant responses to noncompliance records.

The noncompliance record, FSIS Form 5400–4, serves as FSIS's official record of noncompliance with one or more regulatory requirements. Inspection program personnel use the form to document their findings and provide written notification of the official establishment's or plant's failure to comply with regulatory requirements. The establishment or plant management receives a copy of the form and has an opportunity to respond in writing using the noncompliance record form.

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 30 minutes per response.

*Respondents:* Official establishments and plants.

*Estimated No. of Respondents:* 5,000.

*Estimated No. of Annual Responses per Respondent:* 5.

*Estimated Total Annual Burden on Respondents:* 12,500 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence, SW., Room 3532, South Bldg., Washington, DC 20250, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail

subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

**Alfred V. Almanza,**

*Administrator.*

[FR Doc. E9–15813 Filed 7–2–09; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Library

### Notice of Intent To Seek Approval To Collect Information

**AGENCY:** USDA, Agricultural Research Service, National Agricultural Library.

**ACTION:** Notice and Request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Library's intent to request renewal of an approved electronic mailing list subscription form from those whose who work in the nutrition and food safety fields.

**DATES:** Comments on this notice must be received by September 9, 2009 to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Janice Schneider, Information Specialist, Food and Nutrition Information Center, U.S. Department of Agriculture National Agricultural Library, 10301 Baltimore Avenue, Beltsville, Maryland 20705. Comments may be sent by facsimile to (301) 504–6047, fax to (301) 504–6409, or e-mail to *jschneid@ars.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** Janice Schneider, telephone (301) 504–6047.

**SUPPLEMENTARY INFORMATION:**

*Title:* Electronic Mailing List Subscription Form.

*OMB Number:* 0518–0036.

*Expiration Date:* 10/31/2009.

*Type of Request:* Approval for data collection from individuals working in the areas of nutrition and food safety.

*Abstract:* This form contains seven items and is used to collect information about participants who are interested in joining an electronic discussion group. The form collects data to see if a person is eligible to join the discussion group. Because these electronic discussion groups are only available to people who work in the areas of nutrition and food safety, it is necessary to gather this information. The questionnaire asks for the person's name, e-mail address, job affiliation, telephone number, and address.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average one minute per response.

*Respondents:* Individuals who are interested in joining an electronic discussion group.

*Estimated Number of Respondents:* 1,000 per year.

*Estimated Total Annual Burden on Respondents:* 1,000 minutes or 16.66 hours.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: June 1, 2009.

**Antoinette Betschart,**

*Associate Administrator, ARS.*

[FR Doc. E9–15685 Filed 7–2–09; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Supplemental Watershed Plan No. 1 and Environmental Assessment for Big Slough Watershed, Clay County, AR

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Big Slough Watershed Supplement No.1, Clay County, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Rm 3416 Federal Building, 700 West Capital Avenue, Little Rock, AR 72201–3225, Telephone (501) 301–3121.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This project will allow the installation of seven floodwater retarding structures (FWRS Nos. 1, 2, 3, 6, 7, 10, and 11) to be constructed and will provide storage for flood prevention and 100-year sediment storage. All seven structures will be designed and constructed as high hazard dams, capable of safely storing and discharging the runoff from the Probable Maximum Precipitation (PMP) storm without overtopping the dams.

Federal assistance will be provided under the authority of the Flood Prevention Program authorized by the Watershed Protection and Flood Prevention Act (Pub. L. 83–566), as amended.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill

single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Kalven L. Trice, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: June 22, 2009.

**Kalven L. Trice,**

*State Conservationist.*

[FR Doc. E9–15711 Filed 7–2–09; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–891]**

### Hand Trucks and Certain Parts Thereof from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a request from ABC Tools MFG. CORP (ABC Tools), the Department of Commerce (the Department) published a **Federal Register** notice announcing the initiation of a new shipper review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China (PRC) for the period December 1, 2007, through November 30, 2008. On June 3, 2009, ABC Tools withdrew its request for a new shipper review and therefore, we are rescinding this new shipper review with respect to ABC Tools.

**EFFECTIVE DATE:** July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** David Cordell 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) 482–0408 or (202) 482–0649 respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 22, 2009, the Department received a timely request from ABC Tools in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on hand trucks and certain parts thereof from the PRC. On January 22, 2009, the Department found that the request for review with respect to ABC Tools met all of the regulatory requirements set forth in 19 CFR 351.214(b) and initiated an antidumping duty new shipper review. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Initiation of New Shipper Review*, 74 FR 5144 (January 29, 2009) (*Initiation Notice*). On June 3, 2009, ABC Tools withdrew its request for a new shipper review.

#### Rescission of New Shipper Review

Section 351.214(f)(1) of the Department's regulations provides that the Department may rescind a new shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Although ABC Tools withdrew its request after the 60-day deadline, we find it reasonable to extend the deadline because we have not yet committed significant resources to the ABC Tools new shipper review (*e.g.*, we have not issued our preliminary results). Further, in this instance, no other company would be affected by a rescission, and we have received no objections from any party to ABC Tools' withdrawal of its request for this new shipper review. Based upon the above, we are rescinding the new shipper review of the antidumping duty order on hand trucks and certain parts from PRC with respect to ABC Tools. As the Department is rescinding this new shipper review, we are not calculating a company–specific rate for ABC Tools, and ABC Tools will remain part of the PRC–wide entity.

#### Notifications

Because ABC Tools is still under review as part of the PRC–wide entity in the ongoing administrative review, the Department will not order liquidation of entries for ABC Tools. The Department intends to issue liquidation instructions for the PRC–wide entity which will cover any entries by ABC Tools, 15 days after publication of the final results of the ongoing administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destructions of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with section 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: June 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–15825 Filed 7–2–09; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–822]**

### Certain Frozen and Canned Warmwater Shrimp from Thailand: Notice of Court Decision Not in Harmony With Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 24, 2009, the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department's) second redetermination pursuant to the CIT's remand in *Thai I–Mei Frozen Foods Co., Ltd. v. United States*, Court No. 05–00197 (Jun. 24, 2009) *(Thai I–Mei III). See* Final Results of Redetermination Pursuant to Court Remand, dated March 18, 2009 (found at http://ia.ita.doc.gov/remands). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final determination in the less–than-fair–value (LTFV) investigation of certain frozen warmwater shrimp from Thailand. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and*

*Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (Dec. 23, 2004), as amended by the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (Feb. 1, 2005) (*Final Determination*).

**EFFECTIVE DATE:** July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–3874.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 5, 2005, the Department published its amended final determination in the LTFV investigation of certain frozen warmwater shrimp from Thailand. *See Final Determination.* In the *Final Determination*, we based the constructed value (CV) profit for one respondent, Thai I–Mei Frozen Foods Co., Ltd. (Thai I–Mei), on the weighted–average profits earned by the other respondents in the investigation, in accordance with our practice.

On August 26, 2008, the CIT held that the CV profit rate for Thai I–Mei was not determined according to a "reasonable method" as required by the Tariff Act of 1930, as amended (the Act), and remanded the issue to the Department to "redetermine a constructed value profit rate for Thai I–Mei that is in accordance with law."[1] *See Thai I–Mei II.*

On March 18, 2009, the Department issued its final results of redetermination pursuant to *Thai I–Mei II.* In this remand redetermination, the Department recalculated the CV profit rate for Thai I–Mei using the weighted–average of the other respondents' profit on the third country sales of the foreign like product both within and outside the ordinary course of trade, because the CIT found this method reasonable. The Department's second redetermination changed the *Final Determination* dumping margin for Thai I–Mei from 5.29 percent to 1.88 percent.

[1] This was the second remand ruling by the CIT on this issue. Previously, the CIT required the Department to provide further explanation of its CV profit methodology. *See Thai I-Mei Frozen Foods Co., Ltd. v. United States*, 477 F. Supp. 2d 1332 (CIT 2007) (*Thai I-Mei I*). Although the Department complied with this order (*see* Final Results of Redetermination Pursuant to Court Remand, dated June 8, 2007, found at http://ia.ita.doc.gov/remands), the CIT rejected it in *Thai I-Mei Frozen Foods Co., Ltd. v. United States*, Court No. 05-00197 (Aug. 26, 2008) (*Thai I-Mei II*).

**Timken Notice**

In its decision in *Timken*, 893 F.2d at 341, the CAFC held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Thai I–Mei III* on June 24, 2009, constitutes a final decision of that court that is not in harmony with the Department's *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will publish an amended final determination and exclude shrimp produced and exported by Thai I–Mei from the antidumping duty order on frozen warmwater shrimp from Thailand.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: June 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–15831 Filed 7–2–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### Foreign–Trade Zones Board

**[Docket 24–2009]**

### Foreign–Trade Zone 7 - San Juan, PR, Request for Manufacturing Authority, CooperVision Caribbean Corporation (Contact Lenses), Juana Diaz, PR

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company, grantee of FTZ 7, requesting authority on behalf of CooperVision Caribbean Corporation (CooperVision), to manufacture contact lenses under FTZ procedures within FTZ 7. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 26, 2009.

The CooperVision facilities (441,000 sq.ft./1,300 employees) are located within Site 4 at 500 Road 584, Amuelas Industrial Park (manufacturing plant and warehouse) and at Road 149, Lomas Industrial Park (warehouse) in Juana Diaz, Puerto Rico. The facilities are used to manufacture and distribute disposable contact lenses (HTSUS 9001.30; duty rate: 2.0%) for export and the domestic market. At full capacity, the manufacturing plant can produce up to 800 million contact lenses annually. Activity under FTZ procedures would include manufacturing, cleaning, hydrating, polishing, power reading, and packaging. Foreign–origin materials and components that would be purchased from abroad (representing up to 65% of total material inputs, by value) to be used in manufacturing include: polypropelene polymers, quanternary ammonium (PC Hema, YT–Lipidure), esters of acrylic acid, acyclic amides, silicone (primary), and aluminum foil (duty rate range: free 6.5%).

FTZ procedures would exempt CooperVision from customs duty payments on the foreign material inputs used in export production (up to 90% of shipments). On its domestic sales, CooperVision would be able to elect the duty rate that applies to finished contact lenses (2%) for the foreign–origin inputs noted above that have higher duty rates. FTZ designation would further allow CooperVision to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The application indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for receipt of comments is September 4, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 21, 2009.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002, and in the "Reading Room" section of the Board's

website, which is accessible via www.trade.gov/ftz.

For further information, contact Pierre Duy, examiner, at pierre_duy@ita.doc.gov, or (202) 482–1378.

Dated: June 26, 2009.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–15824 Filed 7–2–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO42**

### Marine Mammals; File Nos. 14197 and 782–1812

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

**ACTION:** Notice; issuance of permit and permit amendment.

**SUMMARY:** Notice is hereby given that the U.S. Air Force, 30th Space Wing Civil Engineer Environmental Flight, Vandenberg Air Force Base, CA has been issued a permit to conduct research on marine mammals (File No. 14197); and NMFS National Marine Mammal Laboratory, Seattle, WA, has been issued a major amendment to Scientific Research Permit No. 782–1812 for research on marine mammals.

**ADDRESSES:** The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

(File No. 782–1812 only) Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Kate Swails, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On April 6, 2009, notice was published in the **Federal Register** (74 FR 15460) that requests for a permit and permit amendment to conduct research on marine mammals had been submitted by the above-named applicants. The requested permit and permit amendment have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 14197 authorizes continued studies of the effects of noise from rocket and missile launches and subsequent launch-generated sonic booms on Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) at Vandenberg Air Force Base and the northern California Channel Islands. The permit is valid through June 30, 2014.

Permit No. 782–1812–00, issued on May 9, 2006 (71 FR 27996), authorizes research related to population and health assessment and studies of the ecology of and disease in California sea lions, northern elephant seals, harbor seals, and northern fur seals (Callorhinus ursinus) on the southern California Channel Islands, surrounding waters, and at haul-out sites along the coast of California, Oregon, and Washington. The amendment revises protocols and numbers related to research on California sea lions, and is valid through permit expiration on June 30, 2011.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: June 29, 2009.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–15843 Filed 7–2–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XQ11**

### Bering Sea and Aleutian Islands Crab Rationalization Program

**AGENCY:** Alaska Fishery Science Center (AFSC), National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public workshop.

**SUMMARY:** NMFS will hold a workshop for participants in the Bering Sea and Aleutian Islands Crab Rationalization Program who are required to submit a crab Economic Data Report.

**DATES:** The workshop will be held on Friday, July 17, 2009, from 9:00 a.m. to 5:00 p.m. Pacific standard time.

**ADDRESSES:** The workshop will be held at the Pacific Seafood Processors Association office Conference Room, 1900 W. Emerson Place, Number 205, Seattle, WA 98119.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian Garber-Yonts, AFSC, 206–526–6301 or Steven K. Minor at 360–440–4737.

**SUPPLEMENTARY INFORMATION:** NMFS Alaska Fishery Science Center staff and the Pacific Northwest Crab Industry Advisory Committee are holding a workshop for Crab Rationalization Program fishing industry members to review, discuss, and comment on draft revised crab economic data report (EDR) forms to improve the quality of information collected in the Bering Sea and Aleutian Islands Crab Rationalization Program. The revised EDRs are intended to address critical data quality limitations resulting from the design of the existing forms. The workshop is intended to ensure that NMFS receives consistent and accurate information. Participation from individuals involved in completing the EDR forms is important. This workshop is part of a process to respond to the North Pacific Fisheries Management Council's Crab Rationalization Program economic data collection requirements. The workshop discussion also will address "Best Practices" recommendations for recordkeeping and data validation documentation issued by the EDR auditor.

This is NOT a committee meeting or a presentation or discussion of any analysis. It is a workshop for industry input on EDR forms. It is open to the public and any interested stakeholders.

Copies of the draft revised EDR forms and other relevant documents can be downloaded from the NMFS Alaska Regions BSAI CRAB EDR website at:

*http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/edr/default.htm*

This workshop is physically accessible to people with disabilities. Requests for special accommodations should be directed to Brian Garber-Yonts (see **FOR FURTHER INFORMATION CONTACT**) by DATE.

Dated: June 29, 2009.

**Alan D. Risenhoover,**

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

[FR Doc. E9–15848 Filed 7–2–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XQ15**

### 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's (Council) Ad Hoc Salmon Plan Amendment Committee (SPAC) will hold a meeting to initiate planning and develop draft alternatives for an amendment to the Salmon Fishery Management Plan (FMP) to address the Magnuson-Stevens Act (MSA) requirements for annual catch limits (ACL) and accountability measures (AM). This meeting of the SPAC is open to the public.

**DATES:** The meeting will be held Tuesday, August 4, 2009, from 8:30 a.m. to 5 p.m. and Wednesday August 5, 2009, from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at the National Marine Fisheries Service Southwest Fisheries Science Center, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council, telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The reauthorized MSA established new requirements to end and prevent overfishing through the use of ACL and AM. Federal FMPs must establish mechanisms for ACL and AM by 2010 for stocks subject to overfishing and by 2011 for all others, with the exceptions of stocks managed under an international agreement or stocks with a life cycle of approximately one year..

On January 16, 2009, NMFS published amended guidelines for National Standard 1 (NS1) of the MSA to provide guidance on how to comply with new ACL and AM requirements. The NS1 Guidelines include recommendations for establishing several related reference points to ensure scientific and management uncertainty are accounted for when management measures are established.

The purpose of this meeting is to develop recommendations for the scope of issues to be addressed in the FMP amendment process and to develop a work plan and begin drafting alternatives to address those issues.

Although non-emergency issues not contained in the meeting agenda may come before the SPAC for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 1, 2009.

**Tracey L. Thompson,**

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

[FR Doc. E9–15923 Filed 7–2–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–357–819]**

### Ni-Resist Piston Inserts From Argentina: Preliminary Affirmative Countervailing Duty Determination

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to a producer and exporter of Ni-resist piston inserts from Argentina. For information on the estimated subsidy rate, see the "Suspension of Liquidation" section of this notice.

**DATES:** *Effective Date:* July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

### Case History

On January 26, 2009, the Department received the petition for the imposition of countervailing duties filed in proper form by the petitioner.[1] This investigation was initiated on February 17, 2009. *See Ni-Resist Piston Inserts From Argentina and the Republic of Korea: Initiation of Countervailing Duty Investigations,* 74 FR 8054 (February 23, 2009) (*Initiation Notice*), and accompanying Argentina Initiation Checklist.[2] On March 20, 2009, the Department postponed the deadline for the preliminary determination by 65 days to no later than June 29, 2009. *See Ni-Resist Piston Inserts From Argentina and the Republic of Korea: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigations,* 74 FR 11910 (March 20, 2009).

Normally for an investigation, the Department selects a respondent(s) based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of investigation (POI). In this case, the Harmonized Tariff Schedule of the United States (HTSUS) category that includes subject merchandise is broad and includes products other than products subject to this investigation. We thus determined that such CBP data would not be informative to our respondent selection. In the petition, petitioner identified Clorindo Appo SRL (Clorindo) as the sole Argentine producer/exporter of subject merchandise to the United States during the POI. We did not receive comments from interested parties on respondent selection. Therefore, we selected Clorindo as the mandatory respondent in this investigation. *See* Memorandum from the Team through Melissa Skinner, Director, AD/CVD Operations Office 3, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled "Respondent Selection" (March 4, 2009).

On March 4, 2009, we issued the initial countervailing duty (CVD) questionnaire to the Government of Argentina (GOA) and Clorindo. On March 4 and 27, 2009, petitioner submitted new subsidy allegations. On March 20 and April 6, 2009, the

[1] Petitioner is Korff Holdings, LLC d/b/a Quaker City Castings.

[2] A public version of this and all public memoranda is on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

Department initiated investigations of newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Melissa G. Skinner, Director, AD/CVD Operations Office 3, from Kristen Johnson, trade analyst, AD/CVD Operations Office 3, titled "New Subsidy Allegations" (March 20, 2009), and Memorandum to Melissa G. Skinner, Director, AD/CVD Operations Office 3, from Kristen Johnson. trade analyst, AD/CVD Operations Office 3, titled "Additional New Subsidy Allegations" (April 6, 2009). Questionnaires regarding these newly alleged subsidies were issued to the GOA and Clorindo on March 20 and April 6, 2009, respectively. The GOA and Clorindo submitted questionnaire responses to the March 4, 2009, initial questionnaire and March 20, 2009, new subsidy allegations questionnaire on April 24 and May 6, 2009,[3] respectively.

On May 6 and May 7, 2009, the GOA and Clorindo, respectively, submitted their questionnaire responses to the April 6, 2009, additional new subsidies questionnaire. We issued a supplemental questionnaire to the GOA and Clorindo on May 4, 2009, and received the GOA's supplemental questionnaire response on May 28, 2009, and Clorindo's response on June 1, 2009. On May 29, 2009, we issued a second supplemental questionnaire to the GOA and received the questionnaire response on June 17, 2009. On June 3, 2009, we issued a second supplemental questionnaire to Clorindo and received the questionnaire response on June 17, 2009.

**Scope of the Investigation**

The scope of this investigation includes all Ni-resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni-resist piston inserts may also be called other names including, but not limited to, "Ring Carriers," or "Alfin Inserts." Ni-resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni-resist piston inserts are composed of the material known as Ni-resist, of the chemical composition: 13.5%–17.5% Ni (nickel), 5.5%–8.0% Cu (copper), 0.8%–2.5% Cr (chromium), 0.5%–1.5% Mn (manganese), 1.0%–3.0% Si (silicon), 2.4%–3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A–436 grade 1.

The scope of this investigation does not include piston rings nor any other product manufactured using the Ni-resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the HTSUS, but have been imported under HTSUS 7326.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of this investigation.

**Scope Comments**

In accordance with the *Preamble* to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)), in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. The Department did not receive scope comments from any interested party.

**Injury Test**

Because Argentina is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from Argentina materially injure, or threaten material injury to, a U.S. industry. On March 25, 2009, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina of the subject merchandise. *See Ni-Resist Piston Inserts from Argentina and Korea; Determinations*, Investigation Nos. 701–TA–460–461 (Preliminary), 74 FR 12898 (March 25, 2009).

**Period of Investigation**

The period of investigation for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to Argentina's most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

**Company History**

Clorindo, a privately-owned company, started operations as a car and truck motors repair shop in the mid 1950's. In 1974, the company was incorporated and later in the 1980's, the company added to its product line the Ni-resist piston insert. Clorindo is the only producer and exporter of Ni-resist piston inserts in Argentina. Currently, the only product manufactured by Clorindo is the Ni-resist piston insert.

**Analysis of Programs**

*I. Programs Preliminarily Determined To Be Countervailable*

A. Tax Relief Under the Reintegro

Pursuant to Decree No. 1011/91, the GOA established the Reintegro, which entitles Argentine exporters of new and unused goods manufactured in Argentina to a rebate of domestic indirect taxes that are levied during the production and distribution process of the finished export products.[4] The Reintegro provides a cumulative tax rebate paid upon export, calculated as a percentage of the FOB value of the export less the CIF value of imported raw materials. The Reintegro rate is applied only to the domestic value of the exported product and no rebates are given on imported inputs. The taxes refunded are the domestic indirect taxes (*e.g.*, statistical tax, national fund for electricity tax, and stamp tax) imposed on local production.

All exporters are eligible to receive a rebate of indirect taxes under the Reintegro. There is no application process for the rebate because the provision of the rebate is automatic once the export is conducted and the shipping documents completed and examined by the customs authorities. During the POI, Clorindo was entitled to a rebate of 5.25 percent on each export of subject merchandise to the United States.[5] Exports of subject merchandise are classified under the Argentine tariff schedule subheading 7326.90.00.900J (Other Iron and Steel Manufactures).[6]

[3] On May 1, 2009, counsel for Clorindo was instructed to re-file the company's questionnaire response dated April 24, 2009, because the document contained information not germane to this investigation. *See* Letter from Melissa G. Skinner, Director, AD/CVD Operations Office 3, to Peter Koenig of Squire, Sanders, and Dempsey, dated May 1, 2009. Mr. Koenig re-filed Clorindo's questionnaire response on May 6, 2009.

[4] The GOA established a rebate system in 1971, which was known as the Reembolso. Under the Reembolso, exporters could recover import duties and indirect taxes on items physically incorporated into the final product. In May 1991, the GOA issued Decree 1011/91, which renamed the Reembolso as the Reintegro, and modified the legal structure of the program. Under Decree 1011/91, the Reintegro rebates indirect taxes only. The Department has previously examined the Reintegro and Reembolso. *See, e.g., Final Affirmative Countervailing Duty Determination: Honey From Argentina*, 66 FR 50613 (October 4, 2001), and accompanying Issues and Decision Memorandum at "Argentine Internal Tax Reimbursement/Rebate Program (Reintegro);" and *Final Negative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 67 FR 62106 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Reintegro."

[5] *See* Decree No. 509/2007 at Exhibit 1 of GOA supplemental questionnaire response (SQR) (May 28, 2009).

[6] *See* GOA initial questionnaire response (IQR) at 1 (April 24, 2009).

We preliminarily determine that the Reintegro confers a financial contribution in the form of a direct transfer of funds from the GOA to Clorindo under section 771(5)(D)(i) of the Act and that the Reintegro is specific under section 771(5A)(A) of the Act because it is contingent upon export performance.

To determine whether a benefit exists for a tax rebate program, the Department normally examines whether the amount remitted or rebated exceeds the amount of prior-stage cumulative indirect taxes paid on inputs consumed in the production of the exported subject merchandise, making normal allowances for waste. *See* 19 CFR 351.518(a)(2). If the amount rebated exceeds the amount of the prior-stage cumulative indirect taxes paid on inputs consumed in the production, the excess amount is a countervailable benefit. *Id.*

However, there is an exception to this rule under 19 CFR 351.518(a)(4)(i) and(ii), which states that the Department will consider the *entire* amount of the tax rebate or remission to confer a benefit unless: (1) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or (2) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

In our questionnaires, we asked the GOA to describe the system or procedure that it has in place to establish the appropriate level of Reintegro for the subject merchandise. The GOA stated that while it has no written procedures or guidelines for the operation of this rebate system, it does follow a methodology for establishing the Reintegro rates.[7] The GOA reported that it first identifies, based on industry chamber studies, all the inputs (national or import origin) and other items required to manufacture the product. The GOA stated that it then determines on a percentage-wide basis the amount required of each input and establishes the average amount of each input required to manufacture the exported product. In addition, for each component and other items a cost structure provided by the suppliers is built-in to calculate the tax content for them.[8]

The GOA added that the industry chamber studies are supplemented by an Input-Output Matrix (IOM) administered by the Ministry of Economy. The IOM is a set of matrices (*i.e.*; supply, utilization, margins, transport, import, etc.) that reflect the interactions among different sectors of the Argentine economy. In addition, the GOA explained that there are fiscal matrices that show the taxes paid by each sector of the economy. Based on this methodology and the government's budgetary constraints, the GOA stated that the Ministries of Economy and Production set the Reintegro rebate rates.[9]

We asked the GOA to provide that portion of the IOM and fiscal matrices that are relevant to the subject merchandise or subheading 7326.90.00.09J. The GOA, however, did not submit the requested information, stating that such information is exclusively for internal use.[10] We also asked the GOA to explain how it concluded that the appropriate rate of rebate for subheading 7326.90.00.09J is 5.25 percent. The GOA stated that the only criterion which should be followed is that the rebate rate must not be higher than the percentage of the indirect tax incidence calculated by the industry chamber.[11]

Concerning the rebate rate for the subject merchandise, the GOA stated that it used the indirect tax incidence study prepared in 2002, by the Asociacion de Industriales Metalurgicos de la Republica Argentina (ADIMRA) for tariff subheading 7326.90.00.900J (Other Iron and Steel Manufactures).[12] In preparing its study, the GOA stated that ADIMRA researched a number of industries whose products are classified under this tariff subheading and gathered information from sector and regional enterprise chambers.[13] The study lists the inputs and other items required to produce products exported under the tariff subheading, which, in addition to Ni-resist piston inserts, include such products as metallic boxes, stirrups, towel-heaters, ashtrays, and hooks.[14] The ADIMRA study calculated an indirect tax incidence of 5.35 percent.

In our questionnaires, we requested both the GOA and Clorindo to explain how the company's cost of production and indirect tax incidence data were incorporated into the ADIMRA study. Clorindo stated that it did not submit its table of indirect tax burden to any government agency or industry organization.[15] Clorindo reported that its table of indirect tax burden[16] was prepared in April 2009,[17] for the purpose of this investigation. The GOA stated that the ADIMRA study and Clorindo's table of indirect tax burden coincide with each other because the GOA provided a copy of an ADIMRA study to Clorindo which then calculated the tax incidence for its merchandise according to its own cost and productive structure.[18]

Because Clorindo, the only Argentine producer/exporter of Ni-resist piston inserts, did not provide information used in the ADIMRA 2002 study for tariff subheading 7326.90.00.900J, upon which the GOA relied to set the Reintegro rate, the ADIMRA study is neither representative of the cost structure for the subject merchandise nor reflective of the indirect taxes incurred in the production of the subject merchandise. The ADIMRA study is void of the actual inputs involved in the production of the subject merchandise to confirm which inputs are consumed in the production of Ni-resist piston inserts, in what amounts, and which indirect taxes are imposed on those inputs.

Therefore, the GOA's methodology for establishing the Reintegro rate by first identifying, based on industry chamber studies, all the inputs and other items required to manufacture the exported product, next calculating percentages and average amounts of each of those inputs, and then computing an approximate effective indirect tax incidence, failed to incorporate data for Ni-resist piston inserts. The identification of inputs and indirect tax incidence reported in the ADIMRA study are not reflective of and were not tested against Clorindo's actual information or experience. As such, we preliminarily determine that the 5.25 percent Reintegro rate set by the GOA

[7] *Id.* at 5–6.

[8] *Id.* at 6.

[9] *Id.*

[10] *See* GOA SQR at 6 (May 28, 2009).

[11] *Id.* at 5.

[12] *See* GOA IQR at 7–8 (April 24, 2009).

[13] *See* GOA SQR at 4 (May 28, 2009).

[14] *Id.* at 5.

[15] *See* Clorindo SQR at 6 (June 1, 2009).

[16] *Id.* at Exhibit 8.

[17] *Id.* at 6.

[18] *See* GOA SQR at 3 (May 28, 2009) and at 1 (June 17, 2009).

for the reimbursement of domestic indirect taxes for exported products under tariff subheading 7326.90.00.900J has no relationship to the actual production process and indirect taxes paid by Clorindo. We further preliminarily determine that the absence of cost of production and indirect tax incidence data for Ni-resist piston inserts in the government's Reintegro methodology demonstrates that the GOA lacks a system and procedure for the establishment of the appropriate level of Reintegro rebate applicable to exports of the subject merchandise.

Other than the ADIMRA study, the GOA did not provide any information to demonstrate that it carried out a reasonable examination of actual inputs involved to confirm which inputs are consumed in the production of Ni-resist piston inserts, in what amounts, and which indirect taxes are imposed on those inputs. The GOA reported that it does not conduct audits of companies which receive Reintegro rebates to confirm that the rebate rate assigned for a particular tariff subheading is appropriate.[19]

We, therefore, preliminarily determine that the GOA has not met the requirements for non-countervailability as set forth in 19 CFR 351.518(a)(4)(i) and (ii). As such, we preliminarily determine that the entire amount of the Reintegro rebate received by Clorindo for its exports of Ni-resist piston inserts to be countervailable. Because we preliminarily find the entire amount of the Reintegro for Ni-resist piston inserts to be countervailable, we need not address the Reintegro's countervailability under 19 CFR 351.518(a)(2).

Because the Reintegro is calculated as a percentage of the FOB value of the exports, the percentage rebated serves as the subsidy rate. Thus, we preliminarily determine that Reintegro provided a countervailable subsidy of 5.25 percent *ad valorem* to Clorindo during the POI.

B. Provincial Stamp Tax Exemption

The GOA and Clorindo reported that the company received stamp tax exemptions during the POI. The GOA stated that a stamp tax is applied to documented legal transactions, such as contracts, credit instruments, and property rights, and is administered by the provincial tax authority, which can also establish a stamp tax exemption.[20] On the record, however, there is conflicting information about the type of stamp tax exemption Clorindo received and under which provincial law that exemption was provided.

In its June 17, 2009, questionnaire response at "Stamp Tax Exemptions in the Province of Santa Fe," the GOA reported that there are three stamp tax exemptions: (1) Article 183.29 of the Santa Fe Fiscal Code, which provides a full stamp tax exemption on (a) credits granted to finance import and export transactions and (b) currency exchange transactions subject to the specific tax on the purchase and sale of foreign currency; (2) Article 183.38 of the Santa Fe Fiscal Code, which provides a full tax stamp exemption on all active financial and related transactions, as well as insurance transactions, with financial and insurance entities, when related to mining, industrial, construction, and farming sectors; and (3) Law 11,257 of June 2005, which states that contracts not entitled to the benefits under Article 183.29 and Article 183.38 are subject to a 50 percent reduction of the stamp tax on the transaction value.

The GOA stated that there is no application process or special procedure to benefit from the stamp tax exemptions. The GOA explained that a transaction which meets the criteria established in Article 183.29 or 183.38 of the Fiscal Code or in Law 11,257 is automatically exempt (fully or partially, respectively) from the tax.[21] The GOA, however, did not provide a complete copy and translation of Article 183.29, Article 183.38, or Law 11, 257, which would outline the eligibility criteria of the laws.

In its May 6, 2009, questionnaire response, Clorindo reported that any industrial manufacturer located in the province of Santa Fe is fully exempt from the stamp tax (*i.e.*, 0.10 percent on the transaction value that is split between the transaction parties) and cited to Article 183.29 of the Santa Fe Fiscal Code.[22] Subsequently, in its June 1, 2009, questionnaire response, Clorindo reported that the stamp tax exemptions which it received for "import/export financing and approved credit agreements" were provided for under provincial Law 11,123, which exempts from the stamp tax all active financial and related transactions with financial and insurance entities when related to mining, industrial, construction, and farming sectors. The GOA in its June 17, 2009, questionnaire response stated that Law 11,123 modified the provincial tax and introduced Article 183.38 of the Santa Fe Fiscal Code. Clorindo later reported, in its June 17, 2009, questionnaire response (at 2), that a certain portion of the total amount of the import/export financing and approved credit agreements was related to export transactions and/or export related contracts.

Based on the record evidence, we preliminarily find that Clorindo received a certain amount of stamp tax exemptions under Article 183.29. We preliminarily determine that the stamp tax exemptions provided under Article 183.29 are specific under section 771(5A)(A) of the Act because the exemptions are contingent upon export performance. We also preliminarily determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act in the form of revenue foregone. A benefit is conferred in the form of a tax exemption.

To calculate the benefit, we divided that portion of Clorindo's stamp tax exemption related to export transactions and/or export related contracts by the company's total export sales value for 2008. On this basis, we preliminarily determine the net countervailable subsidy under this program to be 0.17 percent *ad valorem*.

At verification, we will seek further clarification of the laws under which the stamp tax exemptions are provided in Santa Fe, including eligibility criteria, and under which of the laws Clorindo received its stamp tax exemptions during the POI.

*II. Program Preliminarily Determined To Be Not Countervailable*

A. *Provincial Turnover Tax Exemption*

Article 160 (paragraph "n") of the Santa Fe Fiscal Code (Law 3456) established a turnover tax exemption for all the industrial activities and primary production of manufacturing companies located within the territory of Santa Fe Province.[23] The GOA described the turnover tax as a general tax, which is an "accumulative tax" because taxes are levied on goods and services (if not exempted) at each stage of the production process, whether subject to

[19] *See* GOA SQR at 2 (June 17, 2009).

[20] *See* GOA SQR at 12 (May 28, 2009).

[21] *See* GOA at "Stamp Tax Exemption in the Province of Santa Fe" (June 17, 2009).

[22] *See* Clorindo IQR at 15 (May 6, 2009).

[23] *See* GOA SQR at "Provincial Turnover Tax" (June 17, 2009). The GOA reported that the turnover tax exemption was first established by Provincial Decree 3848 of 1993, within the framework of the "Federal Pact for Employment, Production, and Economic Growth" (the Federal Pact). The Federal Pact was launched by the federal government aimed at fostering employment, production, and growth throughout the country. One of the main objectives of the Federal Pact was to modify the turnover tax exemption. The exemption was later modified and its current version is Article 160 (paragraph "n") of the Santa Fe Province Tax Code (Law 3456).

transformation or not. The turnover tax is levied on the total sales value.[24]

The turnover tax exemption is administered and regulated by the Tax Provincial Administration of the Government of Santa Fe. There is no application process or special procedure to benefit from the tax exemption. The GOA reported that any transaction that meets the criteria outlined in Article 160 (paragraph "n") of the Tax Code is automatically exempt from the tax. Eligibility for the tax exemption is not contingent upon export performance or use of domestic over imported goods and is not limited to certain enterprises or industries.

As a manufacturing company located in the province of Santa Fe, Clorindo was eligible for and received turnover tax exemptions on its domestic sales during the POI.[25] Specifically, Clorindo was exempt from paying the general tax rate of 1.50 percent for industrial activity in Santa Fe.[26]

We preliminarily determine that the turnover tax exemption provided under Article 160 of the Fiscal Code is not specific and, hence, does not provide a countervailable benefit. Information on the law provided by the GOA and Clorindo [27] demonstrates that the turnover tax exemption is available to all companies involved in industrial activities and manufacturing production within Santa Fe Province and, therefore, is not specific under section 771(5A)(D) of the Act.

*III. Programs Preliminarily Determined To Be Not Used*

We preliminarily determine that Clorindo did not apply for or receive benefits during the POI under the programs listed below:

A. Subsidiary Fund for Regional Tariff Compensation to Final Users

B. Banco de Inversion y Comercio Exterior S.A. (BICE) Pre-Export Financing

C. BICE Post-Export Financing

D. Banco de la Nacion Argentina (BNA) Pre-Export Financing to Small and Medium Size Enterprises (SMEs)

E. BNA Pre-Export Financing under "Pre-Export Argentinas"

F. BNA Export Financing to SMEs

G. BNA Export Financing (for all exporters)

H. BNA Investment Financing for SMEs under the Credit Lines to Assist SMEs

I. BNA Working Capital Credit under "Finance Companies to Exporters"

J. BNA Working Capital Credit to SMEs under Credit Lines to Assist SMEs

K. BNA Financing of Imports to SMEs under Credit Lines to Assist SMEs

L. BNA Import Financing under "Finance Companies to Exporters"

M. Repro (Production Recovery Plan)

N. Fund for Argentine Technology (FONTAR) Non-Repayable Contributions

O. FONTAR Tax Credit Program

P. FONTAR Regional Credits

Q. FONTAR Credits to Enterprises for Technological Development

R. Fund for Scientific and Technological Research (FONCyT) Research-Oriented Science and Technology (PICT)

S. FONCyT Research and Development Projects (PID)

**Verification**

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by Clorindo and the GOA prior to making our final determination.

**Suspension of Liquidation**

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Clorindo, the only company under investigation. We preliminarily determine the total estimated net countervailable subsidy rate is 5.42 percent *ad valorem*. The All Others rate is 5.42 percent *ad valorem*, which is the rate calculated for Clorindo.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of the subject merchandise from Argentina that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

**ITC Notification**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

**Disclosure and Public Comment**

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–15830 Filed 7–2–09; 8:45 am]

BILLING CODE 3510–DS–P

[24] *See* GOA SQR at 13 (May 28, 2009).

[25] *See* Clorindo SQR at 15–17 (June 1, 2009).

[26] *Id.* at 17 and Clorindo SQR at 4 and Exhibit E (June 17, 2009).

[27] *See* GOA SQR at "Provincial Turnover Tax" (June 17, 2009) and Clorindo SQR at Exhibit C2 (June 17, 2009) and SQR at 15 (June 1, 2009).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(C–580–862)**

### Ni–Resist Piston Inserts from the Republic of Korea: Preliminary Negative Countervailing Duty Determination

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of Ni–resist piston inserts from the Republic of Korea (Korea).

**EFFECTIVE DATE:** July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1009.

**SUPPLEMENTARY INFORMATION:**

#### Case History

On January 26, 2009, the Department received a countervailing duty (CVD) petition concerning Ni–resist piston inserts from Korea filed in proper form by Korff Holdings, LLC, doing business as Quaker City Castings (Petitioner). This investigation was initiated on February 17, 2009. *See Ni–Resist Piston Inserts from Argentina and the Republic of Korea: Initiation of Countervailing Duty Investigations*, 74 FR 8054 (February 23, 2009) (*Initiation Notice*), and accompanying Initiation Checklist..[1] On March 20, 2009, the Department postponed the deadline for the preliminary determination by 65 days to no later than June 29, 2009. *See Ni–Resist Piston Inserts from Argentina and the Republic of Korea: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigations*, 74 FR 11910 (March 20, 2009).

On March 4, 2009, the Department selected Incheon Metal Co., Ltd. (Incheon Metal) as the mandatory respondent in this investigation. *See* Memorandum from the Team through Melissa Skinner, Director, Office 3, Operations, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Respondent Selection" (March 4, 2009).[2]

On March 6, 2009, we issued the initial CVD questionnaire to the Government of Korea (GOK) and Incheon Metal. On April 8, 2009, the GOK submitted its response to the initial CVD questionnaire. On April 28, 2009, Incheon Metal submitted its initial questionnaire response. On April 17, 2009, we issued a supplemental questionnaire to the GOK, to which it responded on April 28, 2009. On May 1, 2009, we issued a supplemental questionnaire to Incheon Metal, to which it submitted a response on May 29, 2009. On May 11, 2009, we issued a second supplemental questionnaire to the GOK, which submitted its response on May 18, 2009. On June 2, 2009, we issued a third supplemental questionnaire to the GOK. On June 11, 2009, the GOK submitted its response to the third supplemental questionnaire.

On April 20, 2009, petitioner submitted new subsidy allegations regarding six programs. On May 13, 2009, the Department initiated investigations of the six newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Melissa G. Skinner, Director, Office 3 Operations, regarding "New Subsidy Allegations" (May 13, 2009). Questionnaires regarding these newly alleged subsidies were sent to the GOK and Incheon Metal on May 13, 2009. The GOK and Incheon Metal submitted their response to the questionnaires on the new subsidy allegations on June 10, 2009.

On May 11, 2009, petitioner submitted additional new subsidy allegations regarding one program. On May 27, 2009, the Department initiated an investigation of the one newly alleged subsidy program pursuant to section 775 of the Act. *See* Memorandum to Melissa G. Skinner, Director, Office 3 Operations, regarding "Additional New Subsidy Allegations" (May 27, 2009). Questionnaires regarding this newly alleged subsidy were sent to the GOK and Incheon Metal on May 29, 2009. The GOK and Incheon Metal submitted their responses to the questionnaires on the additional new subsidy allegation on June 12, 2009.

#### Scope of the Investigation

The scope of this investigation includes all Ni–resist piston inserts regardless of size, thickness, weight, or outside diameter. Ni–resist piston inserts may also be called other names including, but not limited to, "Ring Carriers," or "Alfin Inserts." Ni–resist piston inserts are alloyed cast iron rings, with or without a sheet metal cooling channel pressed and welded into the interior of the insert. Ni–resist piston inserts are composed of the material known as Ni–resist. of the chemical composition: 13.5% - 17.5% Ni (nickel), 5.5% - 8.0% Cu (copper), 0.8% - 2.5% Cr (chromium), 0.5% - 1.5% Mn (manganese), 1.0% - 3.0% Si (silicon), 2.4% - 3.0% C (carbon). The cast iron composition is produced primarily to the material specifications of the American Society for Testing and Materials (ASTM), ASTM A–436 grade 1.

The scope of this investigation does not include piston rings nor did any other product manufacture using the Ni–resist material. The subject imports are properly classified under subheading 8409.99.91.90 of the Harmonized Tariff Schedule of the United States (HTSUS), but have been imported under HTSUS 7326.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive of the scope of these investigations.

#### Injury Test

Because Korea is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On March 25, 2009, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea of subject merchandise. *See Ni–Resist Piston Inserts from Argentina and Korea*, USITC Pub.4066, Inv. Nos. 701–TA–460–461, (March 2009) (Prelim.).

#### Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the most recently completed fiscal year for the two respondents. *See* 19 CFR 351.204(b)(2).

#### Allocation Period

Under 19 CFR 351.524(b), non–recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken

[1] A public version of this and all public Departmental memoranda is on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

[2] A public version of this memorandum is available in the CRU.

from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 13 years. No interested party has claimed that the AUL of 13 years is unreasonable.

## ANALYSIS OF PROGRAMS

### Program Preliminarily Determined To Be Countervailable

*A. Tax Benefits under the Namdong National Industrial Complex Program*

During the POI Incheon Metal received tax benefits under the Namdong National Industrial Complex pursuant to the Framework Act on small and medium–sized enterprises (SMEs) from the GOK. Any SME involved in manufacturing, transportation, or information technology can locate inside the Namdong National Industrial Complex and receive assistance from the government. Under the program, firms inside the complex are eligible to receive exemptions from acquisition and registration taxes that are normally due on real estate transactions. Incheon Metal reported receiving such tax exemptions during the POI in connection with real estate transactions during the POI.

We preliminarily determine that the Incheon Metal received a financial contribution in the form of revenue forgone from the GOK within the meaning of section 771(5)(D)(ii) of the Act and that the exemptions are specific within the meaning of section 771(5A)(D)(iv) of the Act, because they limited to enterprises located inside the Namdong National Industrial Complex. Incheon Metal is located within this complex.

Pursuant to section 771(5)(E) of the Act, we find the tax exemption confers a benefit in the amount equal to the exemption during the POI. We divided the benefit under this program by Incheon Metal's total sales. The resulting net subsidy rate is less than 0.005 percent *ad valorem*. Therefore, in accordance with the Department's practice, we will find that the countervailable benefit is not measurable. *See, e.g., Certain Hot–Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) (*HRC from India*), and accompanying Issues and Decision Memorandum (HRC from India Decision Memorandum) at "Exemption from the CST."

### II. Programs Preliminarily Determined To Be Not Countervailable

*A. Technical Development for Innovation Production Environment (TDIPE)*

Incheon Metal's annual report indicates that it received grants from the GOK during the POI. *See* Incheon Metal's April 24, 2009 response at Exhibit 5. Supplemental questionnaire responses from Incheon Metal and the GOK indicate that Incheon Metal received two grants from the GOK's Small and Medium Business Administration under the TDIPE. *See* Incheon Metal's May 29, 2009 response at 2–3. In the narrative of its supplemental questionnaire response, Incheon Metal indicated that SME's that purchase equipment classified under Harmonized Tariff System (HTS) Chapters 10 through 33 are eligible to receive grants under the TDIPE. The GOK's description of the program and the portions of the TDIPE regulations and sample application forms submitted by the GOK do not make any reference to the grants being limited to purchases of equipment under HTS chapters 10 through 33. *See* GOK's June 12, 2009 response at Exhibits S–29 and S–30. In response to our request, the GOK also submitted information concerning the enterprises and industries that received grants under the TDIPE program during the period 2005 through 2008. *See* GOK's June 12, 2009 response at 19.

Based on our analysis of the information submitted by the GOK regarding the TDIPE program, including a copy of the relevant legislation, we preliminarily determine that the grants under the program are not *de jure* specific within the meaning of sections 771(5A)(A), (B), (C) and (D)(i) and (ii) of the Act. *See also* 19 CFR 351.502(e) and see also the GOK's June 12, 2009, response at Exhibits S–29 and S–30.

Where the Department finds no *de jure* specificity; section 771(5A)(D)(iii) of the Act also directs the Department to examine whether the benefits provided under the program are *de facto* specific, that is, whether the benefits are specific as a matter of fact. Subparagraphs under section 771(5A)(D)(iii) of the Act stipulate that a program is *de facto* specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In response to the Department's request for information regarding these factors, the GOK provided the Department with a breakdown of the issuance of grants (both in terms of amounts and number of recipients), by industry, for the years 2005 through 2008. *See* GOK's June 12, 2009, questionnaire response at 19 and the Department's June 25, 2009, Memorandum to the File (Preliminary *De Facto* Specificity Analysis Memorandum), of which a public version is available in the Central Records Unit in Room 1117. In conducting our *de facto* specificity analysis, we examined the grant amounts issued by the GOK as well as the number of recipients, by industry, during the POI and each of the preceding three years. Specifically, we compared the amount of grants under the TDIPE program that were issued to the metals industry to the amount of grants that were issued to other industries under this program. We conducted the same analysis with regard to the number of recipients. *See* Preliminary *De Facto* Specificity Analysis Memorandum.

Based on our analysis of the data for the TDIPE program, we preliminarily determine that the benefits received by Incheon Metal or the metals industry under this program were not *de facto* specific within the meaning of sections 771(5A)(D)(iii)(I) through (III) of the Act, *i.e.*, we find no limitation as to the number of recipients, predominant use or disproportionate share, of the subsidy. Lastly, we preliminarily determine that there is no evidence on the record of the investigation indicating that the GOK exercised discretion in the decision to issue TDIPE grants which indicates that the metals industry was favored over other industries within the meaning of section 771(5A)(D)(iii)(IV) of the Act.

Consequently, the Department preliminarily determines that the grants received by Incheon Metal under this program are neither *de jure* nor *de facto* specific and, therefore, not countervailable. We will continue to examine this program in this proceeding.

*B. Reserve for Research and Manpower Development Fund Under RSTA Article 9 (Formerly Article 8 of TERCL)*

This program allows a company operating in manufacturing or mining,

or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods companies and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three–percent reserve.

The Department has previously determined that firms that are entitled to establish a reserve up to the three percent level do not receive a countervailable subsidy. *See e.g., Preliminary Results of Countervailing Duty Administrative Review: Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 53413, 53419 (September 11, 2006) (unchanged in final results). Incheon Metal indicated in its questionnaire response that it established its reserve up to the three percent level. Consequently, we preliminarily determine that Incheon Metal's use of the program is not countervailable.

*C. Programs Preliminarily Determined To Have Been Terminated*

1. *Energy Rate Reductions Under the Request Load Adjustment Program*

Petitioner contends that the GOK provides reduced energy rates to companies that reduce their demand by twenty percent. Businesses are eligible for a discount of 440 won per kW under the Requested Load Adjustment program. The GOK reported in its response that the program had been terminated as of January 1, 2005, by the Korean Electric Power Corporation and did not provide any residual benefits. *See* GOK's April 8, 2009, response at 5. Information submitted by the GOK, including translated copies of the relevant regulation, shows that the regulation covering the program has been abolished. *See* GOK's April 28, 2009, supplemental response at 3 and Exhibits S–1 and S–2. The GOK also stated that it has not implemented a successor program. Therefore, subject to verification, we preliminarily determine that this program has been terminated.

2. *Reserve for Investment Funds*

Petitioner alleged that this program allowed Korean firms engaged in manufacturing and mining outside of Seoul to establish a tax reserve. Petitioner further contended that the tax reserve allows eligible firms to reduce their taxable income in a given year and that the program is limited to a geographic area outside of Seoul. The GOK reported that the program was terminated on August 31, 1999, and that the relevant portion of the Restriction of Special Taxation Act was deleted. The GOK provided documentation demonstrating its assertion. *See* GOK's April 8, 2009, response at 7 and Exhibit 7. Therefore, subject to verification, we preliminarily determine that this program has been terminated.

*D. Programs Preliminarily Determined To Be Not Used*

1. Short–Term Export Financing
2. Loans under the Industrial Base Fund
3. Export Loans by Commercial Banks Under KEXIM's Trade Bill Rediscounting Program
4. Subsidized Loans and Guarantees through the Korea Development Bank
5. Export Insurance and Guarantees through the Korea Export Insurance Corporation
6. SME Financing through the Industrial Bank of Korea
7. Export and Import Credit Financing and Guarantees from the Korean Export–Import Bank
8. Export and Import Credit Financing and Guarantees from the Korean Export–Import Bank
9. Financial Aid, Training Assistance and Export Services through the Small and Medium Business Administration
10. Free Economic Zone of Incheon

**Verification**

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by Incheon Metal and the GOK prior to making our final determination.

**Suspension of Liquidation**

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

| Producer/Exporter | Subsidy Rate |
|---|---|
| Incheon Metal Co., Ltd. | *de minimis* percent *ad valorem* |
| All Others | *de minimis* percent *ad valorem* |

Therefore, we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of Ni–resist pistons in Korea. Further, we will direct U.S. Customs and Border Patrol (CBP) not to require suspension of liquidation of all entries of Ni–resist pistons from Korea.

**ITC Notification**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b) (2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

**Disclosure and Public Comment**

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the

Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: June 29, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–15967 Filed 7–2–09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–807]**

### Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea). This review covers one company, Kolon Industries Inc. (Kolon) and the period October 2, 2007, through May 31, 2008. We preliminarily determine that Kolon has not made sales below normal value (NV). If these preliminary results are adopted in the final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**DATES:** *Effective Date:* July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 9, 2008, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on PET film from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 73 FR 32557 (June 9, 2008).

In accordance with Section 751 (a)(1) of the Tariff Act, as amended (the Act) and 19 CFR 351.213(b)(2), on June 30, 2008, Kolon requested an administrative review of the antidumping duty order on PET film from Korea. On June 30, 2008, DuPont Teijin Films (DuPont), Mitsubishi Polyester Film, Inc. (Mitsubishi), and Toray Plastics America Inc. (Toray) (collectively "Petitioners"), also requested a review of Kolon.

On July 30, 2008, the Department initiated an administrative review for Kolon covering the period October 2, 2007, through May 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review,* 73 FR 44220 (July 30, 2008).

On June 30, 2008, we issued our antidumping questionnaire to Kolon. We received Kolon's response to our questionnaire on September 10, 2008 (Section A) and October 3, 2008 (Sections B, C, and D). During the period December 18, 2008, through April 1, 2009, we issued supplemental questionnaires to Kolon. We received responses to those questionnaires from January 23, 2009, through April 24, 2009.

On February 23, 2009, we extended the deadline for the preliminary results of this review until no later than June 30, 2009. *See Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea: Extension of Time Limit for the Preliminary Results of the 2007/2008 Administrative Review,* 74 FR 8054 (February 23, 2009).

On May 26, 2009, Petitioners submitted comments concerning the profitability of Kolon's home market and U.S. sales and the model match methodology that should be employed in this review. On June 9, 2009, Kolon submitted rebuttal comments to Petitioner's May 26, 2009 letter. *See* the "Product Comparisons" section of this Notice, *infra,* for a discussion of the Model match methodology that we have employed in this review.

#### Scope of the Order

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00. The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

#### Period of Review

On August 20, 2008, Kolon requested that the Department amend the time frame covered by the review to the period April 3, 2008, to May 31, 2008. *See* Kolon's August 20, 2008, letter. Kolon noted that April 3, 2008, is the date that the Department published its final results of the changed circumstances review in which Kolon was formally reinstated within the order. *See Polyethylene Terephthalate Film, Sheet, and Strip from Korea: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order,* 73 FR 18259 (April 3, 2008) (*Final Results of CC Review*). Kolon asserted the Department has no basis to review transactions prior to the date Kolon was formally reinstated into the order.

On August 27, 2008, Petitioners filed a rebuttal to Kolon's August 20, 2008 letter. *See* Petitioners' August 27, 2008, letter. Petitioners noted the Department ordered CBP to suspend liquidation of Kolon's entries on October 2, 2007, which is the date the Department issued its Preliminary Results of the Changed Circumstances Review. *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Preliminary Results of Changed Circumstances Review and Intent to Reinstate Kolon Industries, Inc. in the Antidumping Duty Order,* 72 FR 56048 (October 2, 2007). Petitioners assert that because the Department ordered suspension of liquidation with respect to Kolon's entries effective October 2, 2007, that date is the proper date for the beginning of the review period.

We have preliminarily defined the period covered by this review as October 2, 2007, through May 31, 2008. In our *Preliminary Results of CC Review*, we indicated the effective date for suspension of liquidation would be the date of the publication of the *Preliminary Results of CC Review*. *See Preliminary Results of CC Review at 56048*. Furthermore, Kolon was aware of the possibility of reinstatement into the order at the initiation of the changed circumstances review, and the potential imposition of antidumping duties if the Department found that Kolon had resumed dumping. *See Initiation of Antidumping Duty Changed Circumstances Review: Polyethylene Terpthalate Film, Sheet, and Strip from Korea*, 72 FR 527 (January 5, 2007). In order to provide for the imposition of duties at a later point, the Department suspended liquidation of entries on the date of publication of the *Preliminary Results of CC Review*. This is consistent with our practice in changed circumstances reviews. *See, e.g., Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Order*, 70 FR 16218 *(March 30, 2005)* and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement in the Antidumping Order*, 74 FR 22885 (May 15, 2009).

In addition, 19 CFR 351.222(b)(2)(i) states that in considering whether to revoke an antidumping order, the Secretary will, *inter alia*, consider whether the respondent has agreed in writing to an immediate reinstatement into the order if the Secretary concludes that the respondent sold merchandise at less than fair value. In determining to revoke the order as to Kolon, the Department noted that Kolon provided a statement agreeing to the immediate reinstatement of the order if the Department determines that Kolon sold merchandise at less than fair value. *See Polyethylene Terpthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Notice of Revocation in Part*, 61 FR 58374, 58375 (November 14, 1996). Therefore, Kolon was aware of the potential for "immediate" reinstatement in the order if dumping resumed and the necessity of suspending liquidation in order to impose duties at a later point. The inclusion in the period of review of Kolon's U.S. sales made beginning October 2, 2007, through May 31, 2008, is therefore reasonable. This is also in keeping with our practice in other contexts, in which the period of review covers entries, exports and sales during the period beginning with the date of suspension of liquidation. *See* 19 CFR 351.213(e)(1)(ii). Based on the foregoing, we have included in this review all of Kolon's U.S. sales made during the period October 2, 2007, through May 31, 2008.

**Comparisons to Normal Value**

To determine whether sales of PET film from Korea to the United States were made at less than NV, we compared Kolon's constructed export price (CEP) or export price (EP) sales made in the United States to unaffiliated purchasers, to NV, as described in the "United States Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we compared the CEP and EP of individual transactions to monthly weighted-average NVs.

In accordance with section 771(16) of the Act we considered all products produced by Kolon covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We first attempted to compare contemporaneous U.S. and comparison-market sales of products that are identical with respect to the following characteristics: (1) Specification; (2) thickness; (3) surface treatment; and (4) grade. Consistent with the methodology employed in *Final Results of CC Review*, and in the recent investigation of PET film from Thailand, we used the actual thicknesses of the film rather than a range of thicknesses for product comparison purposes. *See Final Results of CC Review* and Accompanying Issues and Decision Memorandum at Comment 7. *See also; Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand* 73 FR 24565, 24567 (May 5, 2008) (unchanged in final determination). Where we were unable to compare sales of identical merchandise, we compared U.S. sales to home market sales of the most similar merchandise based on the above characteristics. Where there were no sales of the foreign like product of the identical merchandise in the ordinary course of trade in the home market to compare to a U.S. sale, we compared the price of the U.S. sale to constructed value (CV).

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the home market at the same level of trade (LOT) as the CEP or EP sales in the U.S. market. The NV LOT is defined as the starting-price sales in the home market or, when NV is based CV, as the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. *See* 19 CFR 351.412(b)(2)(c). The EP LOT is defined as the starting price in the United States to the unaffiliated U.S. customer. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. *See* 773(a)(7)(A) of the Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the home-market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Preliminary CC Review* at 56050; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005); unchanged in *Notice of Final Results of Antidumping Duty Administrative Review of Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Tariff Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the LOTs claimed by the respondent are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be

dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

We obtained information from Kolon regarding the marketing stages involved in making its reported foreign market and U.S. sales to unaffiliated customers. Kolon provided a description of all selling activities performed, along with a flowchart and tables comparing the levels of trade among each channel of distribution and customer category for both markets. *See* Kolon's September 10, 2008, questionnaire response at A–12.

For the home market, Kolon identified two channels of distribution described as follows: (1) Direct shipments (*i.e.*, products produced to order); and (2) warehouse shipments from inventory. *Id.* Within each of these two channels of distribution, Kolon made sales to unaffiliated customers. *Id.* We reviewed the level at which Kolon performed each of these selling functions with respect to each claimed channel of distribution and customer category. For all of the activities listed (which included sales forecasting, strategic and economic planning, sales promotion, order processing, and technical assistance), the level of performance for both direct shipments and warehouse shipments was identical across all types of customers. Based on our analysis of all of Kolon's home market selling functions, we find all home market sales were made at the same LOT, the NV LOT. We also found that Kolon provided a similar level of selling functions on all of its EP sales, and that the level of these EP selling functions was comparable to the level of selling functions that Kolon performed on its home market sales. *Id.* Based on the foregoing, we determine that there is one level of trade for Kolon's EP sales and that the EP LOT is comparable to the home market LOT.

Kolon also indicated it made CEP sales through its U.S. affiliate, Kolon USA. *Id.* We then compared the CEP LOT to the NV LOT. The CEP LOT is based on the selling activities associated with the transaction between Kolon and its affiliated importer, Kolon USA, whereas the NV LOT is based on the selling activities associated with the transactions between Kolon and unaffiliated customers in the home market. Our analysis indicates the selling functions performed for unaffiliated home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Kolon USA. For example, in comparing Kolon's selling activities, we find there are more functions performed in the home market which are not a part of CEP transactions (*e.g.*, sales promotion, inventory maintenance, sales and marketing support). For selling activities performed for both home market sales and CEP sales (*e.g.*, processing customer orders, freight and delivery arrangements), we find Kolon actually performed each activity at a higher level of intensity in the home market. We note that CEP sales from Kolon to Kolon USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles ex-factory sales. In contrast, all sales in the home market occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. *Id.* Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT. Because we found the home market and U.S. sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market prices, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

**United States Price**

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser * * * for exportation to the United States, as adjusted under subsection (c) of this section." Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of the subject merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." For purposes of this administrative review, Kolon classified all of its U.S. sales shipped directly from Korea to the United States as EP sales. Kolon reported all sales that were invoiced through its U.S. subsidiary Kolon USA as CEP transactions. For these preliminary results, we have accepted these classifications. The merchandise shipped directly to unaffiliated customers in the U.S. market was not sold through an affiliated U.S. importer, and we find no other grounds for treating these transactions as CEP sales. We, therefore, preliminarily determine that these transactions were EP sales. We have classified as CEP transactions the merchandise that was invoiced through Kolon USA because these sales were "sold in the United States" within the meaning of 772(b) of the Act.

**Export Price**

We calculated EP in accordance with section 772(a) of the Act. We based EP on packed prices to customers in the United States. We made deductions for billing adjustments and early payment discounts. We also made adjustments for the following movement expenses in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, foreign brokerage and handling charges, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. Finally, we made an addition to U.S. price for duty drawback in accordance with section 772(c)(1)(B) of the Act based upon Kolon's demonstration that it received duty drawback on imported materials used in the production of PET film. *See* Kolon October 3, 2008, Section C response at C–31.

**Constructed Export Price**

In accordance with section 772(b) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States, we calculated CEP. We based CEP on packed prices to unaffiliated purchasers in the United States. We made adjustments for billing adjustments and early payment discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling charges, U.S. brokerage and handling, ocean freight, marine insurance, U.S. inland freight, and U.S. customs duties. As further directed by section 772(d)(1) of the Act, we deducted those selling

expenses associated with economic activity in the United States including direct selling expenses (*i.e.*, commissions, warranties, warehousing, and U.S. credit expenses), inventory carrying costs, and other U.S. indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Finally, we made an addition to U.S. price for duty drawback in accordance with section 772(c)(1)(B) of the Act based upon Kolon's demonstration that it received duty drawback on imported materials used in the production of PET film. *See* Kolon October 3, 2008, Section C response at C–31.

**Normal Value**

*A. Selection of Comparison Market*

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Kolon's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Kolon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. *See* Kolon's September 10, 2008, questionnaire response at Appendix A–1.

*B. Cost of Production Analysis*

Pursuant to 773(b)(2)(A)(ii) of the Act, because the Department had disregarded certain of Kolon's sales in the *Final Results of CC Review* (the most recently completed review in which Kolon participated), the Department had reasonable grounds to believe or suspect that Kolon made home market sales at prices below Kolon's costs of production (COP) in this review. As a result, the Department was directed under section 773(b) of the Act to determine whether Kolon made home market sales during the POR at prices below its COP.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Kolon's cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), interest expenses, and home market packing costs. We relied on the COP information provided by Kolon.

To determine whether Kolon's home market sales had been made at prices below the COP, we computed weighted-average COPs during the POR, and compared the weighted-average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Act. On a product-specific basis, we compared the COP to the home market prices net of billing adjustments, discounts and rebates, any applicable movement charges, selling expenses, and packing expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." See section 773(b)(2)(c) of the Act. Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Kolon revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

*C. Constructed Value*

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Kolon's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials for CV as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

*D. Price-to-Price Comparisons*

We calculated NV based on prices to unaffiliated customers in Korea. We used Kolon's adjustments and deductions as reported. We made deductions, where appropriate, for foreign inland freight pursuant to section 773(a)(6)(B) of the Act. In addition, for comparisons involving similar merchandise, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses. As noted above in the "Level of Trade" section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

*E. Price-to-CV Comparisons*

If we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

**Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

**Preliminary Results of Review**

We preliminarily determine the following weighted-average dumping margin exists for the period October 2, 2007 through May 31, 2008:

| Manufacturer/exporter | Weighted average margin (percentage) |
|---|---|
| Kolon Industries, Inc. ... | 0.15% (*de minimis*) |

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs not later than 30 days after the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

**Assessment**

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific *ad valorem* assessment rates for PET film from Korea based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. *See* 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Kolon will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for Kolon); (2) if the exporter is not a firm covered in this review or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all-others rate of 4.82 percent from the LTFV investigation. *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea*, 56 FR 25669 (June 5, 1991).

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. These preliminary results of administrative review are issued and this notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO84**

## Small Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction and Operation of a Liquefied Natural Gas Facility off Massachusetts

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Neptune LNG, L.L.C. (Neptune) to take, by harassment, small numbers of several species of marine mammals incidental to construction and operations of an offshore liquefied natural gas (LNG) facility in Massachusetts Bay for a period of 1 year.

**DATES:** Effective July 1, 2009, through June 30, 2010.

**ADDRESSES:** A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Neptune LNG Deepwater Port License Application is available for viewing at *http://www.regulations.gov* by entering the search words "Neptune LNG."

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289 ext. 156.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Section 101(a)(5)(D) of the MMPA establishes an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

## Summary of Request

On December 27, 2007, NMFS received an application from Neptune requesting an MMPA authorization to take small numbers of several species of marine mammals, by Level B (behavioral) harassment, incidental to construction and operation of an offshore LNG facility. NMFS has already issued a 1–year IHA to Neptune for construction activities pursuant to section 101(a)(5)(D) of the MMPA (73 FR 33400, June 12, 2008), which is effective through June 30, 2009. This IHA will cover the completion of construction activities and operations for a 1–year period.

## Description of the Project

On March 23, 2007, Neptune received a license to own, construct, and operate a deepwater port (Port or Neptune Port) from MARAD. The Port, which will be located in Massachusetts Bay, will consist of a submerged buoy system to dock specifically designed LNG carriers approximately 22 mi (35 km) northeast of Boston, Massachusetts, in Federal waters approximately 260 ft (79 m) in depth. The two buoys will be separated by a distance of approximately 2.1 mi (3.4 km).

Neptune will be capable of mooring LNG shuttle and regasification vessels (SRVs) with a capacity of approximately 140,000 cubic meters ($m^3$). Up to two SRVs will temporarily moor at the proposed deepwater port by means of a submerged unloading buoy system. Two separate buoys will allow natural gas to be delivered in a continuous flow, without interruption, by having a brief overlap between arriving and departing SRVs. The annual average throughput capacity will be around 500 million standard cubic feet per day (mmscfd) with an initial throughput of 400 mmscfd, and a peak capacity of approximately 750 mmscfd.

The SRVs will be equipped to store, transport, and vaporize LNG, and to odorize, meter and send out natural gas by means of two 16–in (40.6–cm) flexible risers and one 24–in (61–cm) subsea flowline. These risers and flowline will lead to a proposed 24–in (61–cm) gas tran$^{SM}$ission pipeline connecting the deepwater port to the existing 30–in (76.2–cm) Algonquin Hubline$^{SM}$ (Hubline$^{SM}$) located approximately 9 mi (14.5 km) west of the proposed deepwater port location. The Port will have an expected operating life of approximately 20 years. Figure 1–1 of Neptune's application shows an isometric view of the Port.

On February 15, 2005, Neptune submitted an application to the USCG and MARAD under the Deepwater Port Act for all Federal authorizations required for a license to own, construct, and operate a deepwater port for the import and regasification of LNG off the coast of Massachusetts. Because, as described later in this document, there is a potential for marine mammals to be taken by harassment, incidental to construction of the facility and its pipeline and by the transport and regasification of LNG, Neptune has applied for an MMPA authorization. Detailed information on these activities can be found in the MARAD/USCG Final EIS on the Neptune Project (see **ADDRESSES** for availability). Detailed information on the LNG facility's construction and operations and noise generated from these activities was included in NMFS' Notice of Proposed IHA, which published in the **Federal Register** on May 8, 2009 (74 FR 21648). No changes have been made to the proposed activities.

## Comments and Responses

A notice of receipt of Neptune's application and NMFS' proposal to issue an IHA to Neptune was published in the **Federal Register** on May 8, 2009 (74 FR 21648). During the 30–day public comment period, NMFS received a letter from the Marine Mammal Commission, which recommended that NMFS issue the requested IHA, subject to the mitigation, monitoring, and reporting measures identified in the proposed IHA **Federal Register** notice (74 FR 21648, May 8, 2009). All measures proposed in the initial **Federal Register** notice are included in the authorization. No other comment letters were received for this action.

## Description of Marine Mammals Affected by the Activity

Marine mammal species that potentially occur within the Neptune facility impact area include several species of cetaceans and pinnipeds: North Atlantic right whale, blue whale, fin whale, sei whale, minke whale, humpback whale, killer whale, long-finned pilot whale, sperm whale, Atlantic white-beaked dolphin, Atlantic white-sided dolphin, bottlenose dolphin, common dolphin, harbor porpoise, Risso's dolphin, striped dolphin, gray seal, harbor seal, harp seal, and hooded seal. Table 3–1 in the IHA application outlines the marine mammal species that occur in Massachusetts Bay and the likelihood of occurrence of each species. Information on those species that may be impacted by this activity are discussed in detail in the MARAD/USCG Final EIS on the Neptune LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in the NMFS U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Waring *et*

*al.*, 2009), which are available at: *http://www.nefsc.noaa.gov/publications/tm/tm210/*. A summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the action area was provided in the notice of a proposed IHA (74 FR 21648, May 8, 2009).

**Potential Effects of Noise on Marine Mammals**

The effects of sound on marine mammals are highly variable and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The sound may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) The sound may be audible but not strong enough to elicit any overt behavioral response; (3) The sound may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions, such as vacating an area at least until the sound ceases; (4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation) or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent, and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat; (5) Any anthropogenic sound that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise; (6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to sound, it is possible that there could be sound-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and (7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic (or explosive events) may cause trauma to tissue associated with organs vital for hearing, sound production, respiration, and other functions. This trauma may include minor to severe hemorrhage.

There are three general types of sounds recognized by NMFS: continuous, intermittent (or transient), and pulsive. Sounds of short duration that are produced intermittently or at regular intervals, such as sounds from pile driving, are classified as "pulsed." Sounds produced for extended periods, such as sound from generators, are classified as "continuous." Sounds from moving sources, such as ships, can be continuous, but for an animal at a given location, these sounds are "transient" (i.e., increasing in level as the ship approaches and then diminishing as it moves away).

The only anticipated impact to marine mammals during construction and operation would be the short-term displacement of marine mammals from areas ensonified by sound generated by equipment operation and vessel movement (thruster use). The sound sources of potential concern are continuous and intermittent sound sources, including underwater noise generated during pipeline/flowline construction and operational underwater sound generated by regasification/offloading (continuous) and dynamic positioning of vessels using thrusters (intermittent). Neither the construction nor operation of the Port will cause pulsive sound activities, including pile driving, seismic activities, or blasting. Both continuous and intermittent sound sources are subject to NMFS' 120 dB re 1 µPa threshold for determining Level B harassment take levels from continuous underwater noise that may result in the disturbance of marine mammals.

*Potential Impacts of Construction Activities*

Construction and operation of the Neptune Port will occur consecutively, with no overlap in activities. Sound from Port and pipeline construction will cause some possible disturbance to small numbers of both baleen and toothed whales. Additionally, harbor and gray seals may occur in the area and may experience some disturbance.

The installation of the suction piles will produce only low levels of sound during the construction period and will not increase the numbers of animals affected. Modeling results indicate that noise levels would be below 90 dB re 1 µPa within 0.2 mi (0.3 km) of the source. Pipe-laying activities will generate continuous but transient sound and will likely result in variable sound levels during the construction period. Modeling conducted by JASCO Research Limited indicates that, depending on water depth, the 120–dB contour during pipe-laying activities would extend 3.9 km (2.1 nm) from the source and cover an area of 52 $km^2$ (15 $nm^2$). Additionally, the use of thrusters during maneuvering or under certain wind and tidal conditions will generate sound levels above the 120–dB threshold. The temporary elevation in the underwater sound levels may cause some species to temporarily disperse from or avoid construction areas, but they are expected to return shortly after construction is completed. The underwater sound generated by the use of the thrusters during maneuvering or under certain wind and tidal conditions is expected to have only minimal effects to individual marine mammals and is not expected to have a population-level effect to local marine mammal species or stocks because of the short-term and temporary nature of the activity.

The likelihood of a vessel strike of a marine mammal during construction is low since construction vessels travel at very slow speeds. Any whales foraging near the bottom would be able to avoid collision or interaction with the equipment, and displacement would be temporary for the duration of the plow pass. No injury or mortality of marine mammals is expected as a result of construction of the Neptune Port facility.

*Potential Impacts of Operational Activities*

During the operational life of the project, marine mammals will be exposed to intermittent sound from the use of thrusters positioning the carriers at the unloading buoys and the sounds associated with the regasification process. Under certain wind and tidal conditions, the two aft thrusters will be continuously operated to maintain the heading of the vessel into the wind when competing tides operate to push the vessel broadside to the wind. These activities will occur at each of the two fixed-location unloading buoys. The sound from the regasification process is low and will not reach levels of 120 dB re 1 µPa. However, the brief bursts (10–30 min) of sound associated with the use of four thrusters to position the ships would have the potential to disturb marine mammals near the Port. The underwater sound generated by the use of the thrusters during maneuvering or under certain wind and tidal conditions is expected to have only minimal effects to individual marine

mammals and is not expected to have a population-level effect to local marine mammal species or stocks. One reason is the relatively short duration and infrequency of the use of thrusters (every 4–8 days and 10–30 min each episode for maneuvering or intermittently to maintain heading during certain weather conditions when operations reach their peak. However, between July 2009 and June 2010, the period for this IHA, it is expected that only one to two shipments would occur, and they may be spaced even farther apart than every 4–8 days).

The use of thrusters during dynamic positioning and the sounds produced during the regasification process may cause some behavioral harassment to marine mammals present in the project area. However, this harassment is expected to be short-term and minimal in nature. Any displacement from the Port location and surrounding areas is expected to be temporary. Additionally, the distribution of odontocetes in the area is patchy, the presence of baleen whales, especially North Atlantic right whales, is seasonal, and harbor and gray seals have been observed to habituate to human activities, including sound. No injury or mortality is expected as a result of operations at the Port.

Using conservative estimates of both marine mammal densities in the Project area and the size of the 120–dB zone of influence (ZOI), the calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the affected population sizes. Please see the "Estimates of Take by Harassment" section for the calculation of these numbers.

**Estimates of Take by Harassment**

Pipe-laying activities will generate continuous but transient sound and will likely result in variable sound levels during the construction period. Depending on water depth, the 120–dB contour during pipe-laying activities will extend from the source (the Port) out to 3.9 km (2.1 nm) and cover an area of 52 $km^2$ (15 $nm^2$), and, for the flowline at the Port, the 120–dB contour will extend from the pipeline route out to 4.2 km (2.3 nm) and cover an area of 49 $km^2$ (14.3 nm2). (This information is different from what is contained in the March 23, 2007, application submitted by Neptune to NMFS. Neptune conducted its acoustic modeling in the very early planning stages of the project, when little information was available on the types of vessels that could potentially be used during construction. Since that time, a contractor was hired to construct the Port. The vessels to be used during Neptune Port construction are now estimated to generate broadband underwater source levels in the range of 180 dB re 1 Pa at 1m, similar to several of the vessels modeled by JASCO for Neptune and not in the range of 200 dB re 1 μPa at 1m, which was also included in the original modeling as a worst case scenario. For more information on the modeling conducted by JASCO, please refer to Appendix B of Neptune's application.) Installation of the suction pile anchors at the Port will produce only low levels of underwater sound, with no source levels above 120–dB for continuous sound.

In order to estimate the level of takes for the operation phase of this activity, NMFS has used the same ensonified zone as that described above for construction activities (i.e., 52 $km^2$ [15 $nm^2$]).

The basis for Neptune's "take" estimate is the number of marine mammals that potentially could be exposed to sound levels in excess of 120 dB. Typically, this is determined by applying the modeled ZOI (e.g., the area ensonified by the 120–dB contour) to the seasonal use (density) of the area by marine mammals and correcting for seasonal duration of sound-generating activities and estimated duration of individual activities when the maximum sound-generating activities are intermittent to occasional. Nearly all of the required information is readily available in the MARAD/USCG Final EIS, with the exception of marine mammal density estimates for the project area. In the case of data gaps, a conservative approach was used to ensure that the potential number of takes is not underestimated, as described next.

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the project area from May to November. However, the occurrence and abundance of fin, humpback, and minke whales is not well documented within the project area. Nonetheless, NMFS used the data on cetacean distribution within Massachusetts Bay, such as those published by the NCCOS (2006), to determine potential takes of marine mammals in the vicinity of the project area.

The NCCOS study used cetacean sightings from two sources: (1) the North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at the NMFS Northeast Fisheries Science Center (NEFSC). The NARWC data contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: the Cetacean and Turtles Assessment Program, the Canadian Department of Fisheries and Oceans, the Provincetown Center for Coastal Studies, International Fund for Animal Welfare, NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 406,293 mi (653,725 km) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of Maine study area, which also includes the project area (NCCOS, 2006).

The MBO's Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern U.S. (MBO, 1987). The CSAP program was designed to be completely compatible with NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 8,383 mi (5,210 km) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS analysis. Combined valid survey effort for the NCCOS studies included 913,840 mi (567,955 km) of survey track for small cetaceans (dolphins and porpoises) and 1,060,226 mi (658,935 km) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Based on the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, NMFS calculated the estimated take number of marine mammals based on the most recent NCCOS report published in December, 2006. A summary of seasonal cetacean distribution and abundance in the project area was provided in the proposed IHA **Federal Register** notice (74 FR 21648, May 8, 2009). For a detailed description and calculation of the cetacean abundance data and SPUE,

refer to the NCCOS study (NCCOS, 2006). SPUE for the spring, summer, and fall seasons were analyzed, and the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance. Based on the data, the relative abundance of North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0407, and 0.1314 n/km, respectively.

In calculating the area density of these species from these linear density data, NMFS used 0.4 km (0.25 mi), which is a quarter the distance of the radius for visual monitoring (see the "Mitigation and Monitoring Measures" section later in this document), as a conservative hypothetical strip width (W). Thus the area density (D) of these species in the project area can be obtained by the following formula:

$D = SPUE/2W$.

Based on the calculation, the estimated take numbers by Level B harassment for the 1–year IHA period for North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins, within the 120–dB ZOI of the LNG Port facility area of approximately 52 $km^2$ (15 $nm^2$) maximum ZOI, corrected for 50 percent underwater, are 48, 57, 155, 35, 238, and 770, respectively. This estimate is based on an estimated 60 days of construction activities remaining for the period July until September, 2009, that will produce sounds of 120 dB or greater.

Based on the same calculation method described above for Port construction, the estimated take numbers by Level B harassment for North Atlantic right, fin, humpback, minke, and pilot whales and Atlantic white-sided dolphins for the 1–year IHA period incidental to Port operations (which is expected to happen no more than twice during the effectiveness of this proposed IHA), operating the vessel's thrusters for dynamic positioning before offloading natural gas, corrected for 50 percent underwater, are 2, 2, 5, 1, 8, and 26, respectively.

The total estimated take of these species as a result of both construction and operation of the Neptune Port facility from July 1, 2009, through June 30, 2010, is: 50 North Atlantic right whales, 59 fin whales, 160 humpback whales, 36 minke whales, 246 pilot whales, and 796 Atlantic white-sided dolphins. These numbers represent a maximum of 15.4, 2.6, 18.9, 1.1, 0.8, and 1.3 percent of the populations for these species in the western North Atlantic, respectively. Since it is highly likely that individual animals will be "taken" by harassment multiple times (since certain individuals may occur in the area more than once while other individuals of the population or stock may not enter the proposed project area) and the fact that the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance, these percentages are the upper boundary of the animal population that could be affected. Therefore, the actual number of individual animals being exposed or taken are expected to be far less.

In addition, bottlenose dolphins, common dolphins, killer whales, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of the deepwater LNG port project. The numbers of estimated take of these species are not available because they are rare in the project area. The population estimates of these marine mammal species and stocks in the western North Atlantic basin are 81,588; 120,743; 89,700; 99,340; and 195,000 for bottlenose dolphins, common dolphins, harbor porpoises, harbor seals, and gray seals, respectively (Waring *et al.*, 2007). No population estimate is available for the North Atlantic stock of killer whales, however, their occurrence within the proposed project area is rare. Since Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur, and these animals do not regularly congregate in the vicinity of the project area, NMFS believes that only relatively small numbers of these marine mammal species would be potentially affected by the Neptune LNG deepwater project. From the most conservative estimates of both marine mammal densities in the project area and the size of the 120–dB ZOI, the maximum calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population sizes (18.9 percent for humpback whales and 15.4 percent for North Atlantic right whales and no more than 2.6 percent of any other species).

**Potential Impact of the Activity on Habitat**

*Potential Impact on Habitat from Construction*

Construction of the Neptune Port and pipeline will affect marine mammal habitat in several ways: seafloor disturbance, increased turbidity, and generation of additional underwater sound in the area. Proposed construction activities will temporarily disturb 418 acres (1.7 $km^2$) of seafloor (11 acres (0.04 $km^2$) at the Port, 85 acres (0.3 $km^2$) along the pipeline route, and an estimated 322 acres (1.3 $km^2$) due to anchoring of construction and installation vessels). Of the proposed construction activities, pipeline installation, including trenching, plowing, jetting, and backfill, is expected to generate the most disturbance of bottom sediments. Sediment transport modeling conducted by Neptune indicates that initial turbidity from pipeline installation could reach 100 milligrams per liter (mg/L) but will subside to 20 mg/L after 4 hours. Turbidity associated with the flowline and hot-tap will be considerably less and also will settle within hours of the work being completed. Resettled sediments also will constitute to seafloor disturbance. When re-suspended sediments resettle, they reduce growth, reproduction, and survival rates of benthic organisms, and in extreme cases, smother benthic flora and fauna. Plankton will not be affected by resettled sediment. The project area is largely devoid of vegetation and consists of sand, silt, clay, or mixtures of the three.

Recovery of soft-bottom benthic communities impacted by project installation is expected to be similar to the recovery of the soft habitat associated with the construction of the Hubline$^{SM}$ (Algonquin Gas Transmission L.L.C., 2004). Post-construction monitoring of the Hubline$^{SM}$ indicates that areas that were bucket-dredged showed the least disturbance. Displaced organisms will return shortly after construction ceases, and disrupted communities will easily re-colonize from surrounding communities of similar organisms. Similarly, disturbance to hard-bottom pebble/cobble and piled boulder habitat is not expected to be significant. Some organisms could be temporarily displaced from existing shelter, thereby exposing them to increased predation, but the overall structural integrity of these areas will not be reduced (Auster and Langton, 1998).

Short-term impacts on phytoplankton, zooplankton (holoplankton), and planktonic fish and shellfish eggs and larvae (meroplankton) will occur as a result of the project. Turbidity associated with Port and pipeline installation will result in temporary direct impacts on productivity, growth, and development. Phytoplankton and zooplankton abundance will be greatest during the summer construction schedule. Fish eggs and larvae are present in the project area throughout

the year. Different species of fish and invertebrate eggs and larvae will be affected by the different construction schedules.

The temporary disturbance of benthic habitat from trenching for and burial of the tranSMission pipeline will result in direct, minor, adverse impacts from the dispersion of fish from the area and the burying or crushing of shellfish. In the short-term, there will be a temporary, indirect, and beneficial impact from exposing benthic food sources. Seafloor disturbance could also occur as a result of resettling of suspended sediments during installation and construction of the proposed Port and pipeline. Redeposited sediments will potentially reduce viability of demersal fish eggs and growth, reproduction, and survival rates of benthic shellfish. In extreme cases, resettled sediments could SMother benthic shellfish, although many will be able to burrow vertically through resettled sediments.

Based on the foregoing, construction activities will not create long-term habitat changes, and marine mammals displaced by the disturbance to the seafloor are expected to return soon after construction ceases. Marine mammals also could be indirectly affected if benthic prey species were displaced or destroyed by construction activities. However, affected species are expected to recover soon after construction ceases and will represent only a small portion of food available to marine mammals in the area.

*Potential Impact on Habitat from Operation*

Operation of the Port will result in long-term, continued disturbance of the seafloor, regular withdrawal of seawater, and generation of underwater sound.

*Seafloor Disturbance:* The structures associated with the Port (flowline and pipeline, unloading buoys and chains, suction anchors) will be permanent modifications to the seafloor. Up to 63.7 acres (0.25 $km^2$) of additional seafloor will be subject to disturbance due to chain and flexible riser sweep while the buoys are occupied by SRVs.

*Ballast and Cooling Water Withdrawal:* Withdrawal of ballast and cooling water at the Port as the SRV unloads cargo (approximately 2.39 million gallons per day) could potentially entrain zooplankton and ichthyoplankton that serve as prey for whale species. This estimate includes the combined seawater intake while two SRVs are moored at the Port (approximately 9 hr every 6 days). The estimated zooplankton abundance in the vicinity of the seawater intake ranges from 25.6–105 individuals per gallon (Libby *et al.*, 2004). This means that the daily intake will remove approximately 61.2–251 million individual zooplankton per day, the equivalent of approximately 7.65–31.4 lbs (3.47–14.2 kg). Since zooplankton are short-lived species (e.g., most copepods live from 1 wk to several months), these amounts will be indistinguishable from natural variability.

*Underwater Sound:* During operation of the Port, underwater sound will principally be generated by use of thrusters when SRVs are mooring at the unloading buoy and at other times for maintaining position under certain wind and tidal conditions. Thruster use will be intermittent, equating to about 20 hr/yr when the Port is fully operational and should equate to less than 1 hr during the period of effectiveness for this proposed IHA.

In the long-term, approximately 64.6 acres (0.26 $km^2$) of seafloor will be permanently disturbed to accommodate the Port (including the associated pipeline). The area disturbed because of long-term chain and riser sweep includes 63.7 acres (0.25 $km^2$) of soft sediment. This area will be similar in calm seas and in hurricane conditions. The chain weight will restrict the movement of the buoy or the vessel moored on the buoy. An additional 0.9 acre (0.004 $km^2$) of soft sediments will be converted to hard substrate. The total affected area will be small compared to the soft sediments available in the proposed project area. Long-term disturbance from installation of the Port will comprise approximately 0.3 percent of the estimated 24,000 acres (97 $km^2$) of similar bottom habitat surrounding the project area (northeast sector of Massachusetts Bay).

It is likely that displaced organisms will not return to the area of continual chain and riser sweep. A shift in benthic faunal community is expected in areas where soft sediment is converted to hard substrate (Algonquin Gas TranSMission LLC, 2005). This impact will be beneficial for species that prefer hard-bottom structure and adverse for species that prefer soft sediment. Overall, because of the relatively small areas that will be affected, impacts on soft-bottom communities are expected to be minimal.

Daily removal of seawater will reduce the food resources available for planktivorous organisms. The marine mammal species in the area have fairly broad diets and are not dependent on any single species for survival. Because of the relatively low biomass that will be entrained by the Port, the broad diet, and broad availability of organisms in the proposed project area, indirect impacts on the food web that result from entrainment of planktonic fish and shellfish eggs and larvae are expected to be minor and therefore should have minimal impact on affected marine mammal species or stocks.

**Mitigation and Monitoring Measures**

For the Neptune LNG Port construction and operation activities, NMFS is requiring the following monitoring and mitigation measures.

*Port Construction Minimization Measures*

(1) General

Construction activities will be limited to a May through November time frame so that acoustic disturbance to the endangered North Atlantic right whale can largely be avoided.

(2) Visual Monitoring Program

The Neptune Project will employ two marine mammal observers (MMOs) on each lay barge, bury barge, and diving support vessel for visual shipboard surveys during construction activities. Qualifications for these individuals will include direct field experience on a marine mammal/sea turtle observation vessel and/or aerial surveys in the Atlantic Ocean and/or Gulf of Mexico. The observers (one primary, one secondary) are responsible for visually locating marine mammals at the ocean's surface, and, to the extent possible, identifying the species. Both observers will have responsibility for monitoring for the presence of marine mammals. The primary observer will act as the identification specialist, and the secondary observer will serve as data recorder and also assist with identification. All observers must receive NMFS-approved MMO training and be approved in advance by NMFS after review of their qualifications.

The MMOs will be on duty at all times when each vessel is moving and at selected periods when construction vessels are idle, including when other vessels move around the construction lay barge. The MMOs will monitor the construction area beginning at daybreak using 25x power binoculars and/or hand-held binoculars, resulting in a conservative effective search range of 0.5 mi (0.8 km) during clear weather conditions for the shipboard observers. The MMO will scan the ocean surface by eye for a minimum of 40 min/hr. All sightings will be recorded in marine mammal field sighting logs. Observations of marine mammals will be identified to species or the lowest taxonomic level and their relative position will be recorded. Night vision

devices will be standard equipment for monitoring during low-light hours and at night.

During all phases of construction, MMOs will be required to scan for and report all marine mammal sightings to the vessel captain. The captain will then alert the environmental coordinator that a marine mammal is near the construction area. The MMO will have the authority to bring the vessel to idle or to temporarily suspend operations if a baleen whale is seen within 0.6 mi (1 km) of the moving pipelay vessel or construction area. The MMO or environmental coordinator will determine whether there is a potential for harm to an individual animal and will be charged with responsibility for determining when it is safe to resume activity. A vessel will not increase power again until the marine mammal(s) leave(s) the area or has/have not been sighted for 30 min. The vessel will then power up slowly.

Construction and support vessels are required to display lights when operating at night, and deck lights are required to illuminate work areas. However, use of lights shall be limited to areas where work is actually occurring, and all other lights must be extinguished. Lights must be downshielded to illuminate the deck and shall not intentionally illuminate surrounding waters, so as not to attract whales or their prey to the area.

(3) Distance and Noise Level for Cut-Off

(a) During construction, if a marine mammal is detected within 0.5 mi (0.8 km) of a construction vessel, the vessel superintendent or on-deck supervisor will be notified immediately. The vessel's crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the construction area. The observer is required to report all North Atlantic right whale sightings to NMFS, as soon as possible.

(b) Construction vessels will cease any movement in the construction area if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) from the operating construction vessel. Construction vessels will cease any movement in the construction area if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating construction vessel. Vessels transiting the construction area such as pipe haul barge tugs will also be required to maintain these separation distances.

(c) Construction vessels will cease all activities that emit sounds reaching a received level of 120 dB re 1 µPa or higher at 100 yd (91 m) if a marine mammal other than a right whale is sighted within or approaching to this distance, or if a right whale is sighted within or approaching to a distance of 500 yd (457 m), from the operating construction vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 µPa.

(d) Construction may resume after the marine mammal is positively reconfirmed outside the established zones (either 500 yd (457 m) or 100 yd (91 m), depending upon species).

(4) Vessel Strike Avoidance

(a) While under way, all construction vessels will remain 0.6 mi (1 km) away from right whales and all other whales to the extent possible and 100 yd (91 m) away from all other marine mammals to the extent physically feasible given navigational constraints.

(b) MMOs will direct a moving vessel to slow to idle if a baleen whale is seen less than 0.6 mi (1 km) from the vessel.

(c) All construction vessels 300 gross tons or greater will maintain a speed of 10 knots (18.5 km/hr) or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the construction site must contact the appropriate authority or the construction site before leaving shore for reports of recent right whale sighting and, consistent with navigation safety, restrict speeds to 10 knots (18.5 km/hr) or less within 5 mi (8 km) of any recent sighting location.

(d) Vessels transiting through the Cape Cod Canal and Cape Cod Bay (CCB) between January 1 and May 15 will reduce speeds to 10 knots (18.5 km/hr) or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic, and avoid aggregations of right whales in the eastern portion of CCB. To the extent practicable, pipe deliveries will be avoided during the January to May time frame. In the unlikely event the Canal is closed during construction, the pipe haul barges will transit around Cape Cod following the Boston Traffic Separation Scheme (TSS) and all measures for the SRVs when transiting to the Port.

(e) Construction and support vessels will transit at 10 knots or less in the following seasons and areas, which either correspond to or are more restrictive than the times and areas in NMFS' final rule (73 FR 60173, October 10, 2008) to implement speed restrictions to reduce the likelihood and severity of ship strikes of right whales:

- Southeast U.S. Seasonal Management Area (SMA) from November 15 through April 15, which is bounded by the shoreline, 31° 27' N. (i.e., the northern edge of the Mandatory Ship Reporting System (MSRS) boundary) to the north, 29° 45' N. to the south, and 80° 51.6' W. (i.e., the eastern edge of the MSRS boundary);
- Mid-Atlantic SMAs from November 1 through April 30, which encompass the waters within a 30 nm (55.6 km) area with an epicenter at the midpoint of the COLREG demarcation line crossing the entry into the following designated ports or bays: (a) Ports of New York/New Jersey; (b) Delaware Bay (Ports of Philadelphia and Wilmington); (c) Entrance to the Chesapeake Bay (Ports of Hampton Roads and Baltimore) (d) Ports of Morehead City and Beaufort, North Carolina; (e) Port of Wilmington, North Carolina; (f) Port of Georgetown, South Carolina; (g) Port of Charleston, South Carolina; and (h) Port of Savannah, Georgia;
- CCB SMA from January 1 through May 15, which includes all waters in CCB, extending to all shorelines of the Bay, with a northern boundary of 42° 12' N. latitude;
- Off Race Point SMA year round, which is bounded by straight lines connecting the following coordinates in the order stated: 42° 30' N. 69° 45' W.; thence to 42° 30' N. 70° 30' W.; thence to 42° 12' N. 70° 30' W.; thence to 42° 12' N. 70° 12' W.; thence to 42° 04' 56.5'' N. 70° 12' W.; thence along mean high water line and inshore limits of COLREGS limit to a latitude of 41° 40' N.; thence due east to 41° 41' N. 69° 45' W.; thence back to starting point; and
- Great South Channel (GSC) SMA from April 1 through July 31, which is bounded by straight lines connecting the following coordinates in the order stated:

42° 30' N. 69° 45' W.
41° 40' N. 69° 45' W.
41° 00' N. 69° 05' W.
42° 09' N. 67° 08' 24'' W.
42° 30' N. 67° 27' W.
42° 30' N. 69° 45' W.

(5) Passive Acoustic Monitoring (PAM) Program

In addition to visual monitoring, Neptune will utilize a PAM system to aid in the monitoring and detection of North Atlantic right whales in the project construction area. The PAM system will be capable of detecting and localizing (range and bearing) North Atlantic right whales in real-time with the use of six strategically placed acoustic bouys. When combined with the action and communication plan, Neptune has the capability to make

timely decisions and undertake steps to minimize the potential for collisions between these marine mammals and construction vessels. An array of auto-detection monitoring buoys moored at regular intervals in a circle surrounding the site of the terminal and associated pipeline construction were installed in 2008 and will be redeployed for the 2009 construction season. Passive acoustic devices are actively monitored for detections by a NMFS-approved bioacoustic technician.

Nineteen permanent archival acoustic recording units (ARUs) or pop-ups have been arranged around the Port and pipeline to maximize auto detection and to provide localization capability. The buoys are designed to monitor the sound output from construction activities to assess construction impacts on marine mammals and to aid in the estimation of takes during the construction period.

(6) Other Measures

Operations involving excessively noisy equipment must "ramp-up" sound sources, as long as this does not jeopardize the safety of vessels or construction workers, allowing whales a chance to leave the area before sounds reach maximum levels. Contractors are required to utilize vessel-quieting technologies that minimize sound. Contractors are required to maintain individual Spill Prevention, Control, and Containment Plans in place for construction vessels during construction.

An environmental coordinator with experience coordinating projects to monitor and minimize impacts to marine mammals will be onsite to coordinate all issues concerning marine protected species, following all of the latest real-time marine mammal movements. The coordinator will work to ensure that environmental standards are adhered to and adverse interactions between project equipment and marine mammals do not occur.

*Port Operation Minimization Measures*

(1) Visual Monitoring and Vessel Strike Avoidance

Prior to entering areas where right whales are known to occur, including the GSC and the Stellwagen Bank National Marine Sanctuary, SRV operators will consult NAVTEX, NOAA Weather Radio, NOAA's Right Whale Sighting Advisory System (SAS), or other means to obtain the latest Dynamic Management Area (DMA) information. Vessel operators will also receive active detections from the passive acoustic array prior to and during transit through the northern leg of the Boston Harbor TSS where the buoys are installed.

In response to active DMAs or acoustic detections, SRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots (18.5 km/hr) maximum and posting additional observers. Designated crew members will undergo NMFS-approved training regarding marine mammal presence and collision avoidance procedures.

Vessels approaching and departing the port from LNG supply locations will enter the Boston Harbor TSS as soon as practicable and remain in the TSS until the Boston Harbor Precautionary Area. SRVs and support vessels will travel at 10 knots (18.5 km/hr) maximum when transiting to/from the port outside of the TSS. SRVs will abide by the same restrictions as required in the "Vessel Strike Avoidance" subsection for "Port Construction Minimization Measures" in the Off Race Point and GSC SMAs for operations unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety and maneuverability of the vessel. In such cases where speeds in excess of the 10–knot (18.5 km/hr) speed maximums are required, the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation will be documented in the logbook of the vessel and reported to NMFS' Northeast Region Ship Strike Coordinator.

All vessels will comply with the year-round MSRS. If whales are seen within 0.6 mi (1 km) of the buoy, then the SRVs will wait until the whale(s) leave(s) the area before departing.

(2) PAM Program

The array of auto-detection monitoring buoys described previously in the "Passive Acoustic Monitoring (PAM) Program" subsection of this document will be monitored during the LNG Port operations and will provide near real-time information on the presence of vocalizing whales in the shipping lanes. Additionally, the ARUs, discussed in that subsection, will be in place for 5 years following initiation of operations to monitor the actual acoustic output of port operations and to alert NOAA to any unanticipated adverse effects of port operations, such as large-scale abandonment of the area or greater acoustic impacts than predicted through modeling.

**Reporting Requirements**

During construction, weekly status reports will be provided to NMFS utilizing standardized reporting forms. In addition, the Neptune Port Project area is within the Mandatory Ship Reporting Area (MSRA), so all construction and support vessels will report their activities to the mandatory reporting section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA will report their activities to WHALESNORTH. Any right whale sightings will be reported to the NMFS SAS.

During all phases of project construction, sightings of any injured or dead marine mammals will be reported immediately to the USCG and NMFS, regardless of whether the injury or death is caused by project activities. Sightings of injured or dead marine mammals not associated with project activities can be reported to the USCG on VHF Channel 16 or to NMFS Stranding and Entanglement Hotline. In addition, if the injury or death was caused by a project vessel (e.g., SRV, support vessel, or construction vessel), USCG must be notified immediately, and a full report must be provided to NMFS, Northeast Regional Office. The report must include the following information: (1) the time, date, and location (latitude/longitude) of the incident; (2) the name and type of vessel involved; (3) the vessel's speed during the incident; (4) a description of the incident; (5) water depth; (6) environmental conditions (e.g., wind speed and direction, sea state, cloud cover, and visibility); (7) the species identification or description of the animal; and (8) the fate of the animal.

An annual report on marine mammal monitoring and mitigation will be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of the IHA. The weekly reports and the annual report should include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of LNG facility construction and operations. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to construction and operation activities shall also be included in the annual report. Additional information that will be recorded during construction and contained in the reports include: date and time of marine mammal detections (visually or acoustically), weather conditions, species identification, approximate distance from the source,

activity of the vessel or at the construction site when a marine mammal is sighted, and whether thrusters were in use and, if so, how many at the time of the sighting.

**Endangered Species Act (ESA)**

On January 12, 2007, NMFS concluded consultation with MARAD and USCG under section 7 of the ESA on the proposed construction and operation of the Neptune LNG facility and issued a Biological Opinion. The finding of that consultation was that the construction and operation of the Neptune LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green, or leatherback sea turtles. Issuance of this IHA will not have any impacts beyond those analyzed in that consultation.

**National Environmental Policy Act**

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Neptune LNG Deepwater Port. A notice of availability was published by MARAD on November 2, 2006 (71 FR 64606). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods, and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency in the preparation of the Draft and Final EISs based on a Memorandum of Understanding related to the Licensing of Deepwater Ports entered into by the U.S. Department of Commerce along with 10 other government agencies. On June 3, 2008, NMFS adopted the USCG and MARAD FEIS and issued a separate Record of Decision for issuance of authorizations pursuant to sections 101(a)(5)(A) and (D) of the MMPA for the construction and operation of the Neptune LNG Port facility.

**Determinations**

NMFS has determined that the impact of construction and operation of the Neptune Port Project may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Neptune LNG facility and associated pipeline during its construction and operation. These activities are expected to result in some local short-term displacement, resulting in no more than a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence use does not apply for this action as there is no such uses of these species or stocks in the project area.

This determination is supported by measures described earlier in this document under "Mitigation and Monitoring Measures," "Reporting Requirements," and MARAD's ROD (and NMFS' Biological Opinion on this action). As a result of the described mitigation measures, no take by injury or death is requested, anticipated, or authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low sound source levels (and consequently small zone of impact for hearing-related effects). The likelihood of such effects will be avoided through the incorporation of the shut-down mitigation measures mentioned in this document. While the number of marine mammals that may be harassed will depend on the distribution and abundance of marine mammals in the vicinity of the Port facility during construction and operation, the estimated number of marine mammals to be harassed is small.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to Neptune for the taking (by Level B harassment only) incidental to construction and operation of the Neptune Port provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 26, 2009.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–15829 Filed 7–2–09; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare an Environmental Impact Statement for Whittier Harbor Navigation Improvements Feasibility Study

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) announces its intention to prepare an Environmental Impact Statement (EIS) to study the feasibility of expanding the existing moorage capacity for vessels at Whittier, AK. This study will be performed through partnership of USACE and the City of Whittier. The existing moorage at Whittier is at maximum capacity, resulting in overcrowded and unsafe conditions for harbor users. Additionally, the City will be unable to meet the growing moorage demands of commercial, charter, recreation, and subsistence vessels in the near future. The EIS will address potential environmental impacts of the construction, operation, and maintenance of the new and existing harbor. USACE has held scoping meetings in Whittier and Anchorage, AK, in an effort to better define the issues associated with Whittier Harbor. Scoping will be ongoing throughout the feasibility study process.

**DATES:** Letters to interested parties will be mailed in July 2009, to solicit public comment on the feasibility study. Accompanying the letter will be a summary of comments received as a result of scoping meetings held on February 19, 2009 in Whittier, AK and May 7, 2009 in Anchorage, AK. Subsequent meetings will be held as necessary and advertised in local newspapers.

**ADDRESSES:** Please direct comments or suggestions on the scope of the EIS to: Mr. Michael Salyer, NEPA Coordinator, U.S. Army Corps of Engineers, Alaska District, EN–CW–ER, P.O Box 6898, Elmendorf AFB, AK 99506–0898; Phone: 907–753–2690; Fax: (907) 753–2625, e-mail *michael.9.salyer@usace.army.mil* (please use "NOI Comments on Whittier Harbor" for the subject).

**FOR FURTHER INFORMATION CONTACT:** For information or questions concerning the proposed project, contact: Mr. Bruce Sexauer, Plan Formulator, U.S. Army Corps of Engineers, Alaska District, EN–CW–PF, P.O. Box 6898, Elmendorf AFB, AK 99506–0898; Phone: 907–753–5619; Fax: (907) 753–2625; e-mail: *Bruce.R.Sexauer@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The City of Whittier was incorporated in 1969. Whittier Harbor was constructed in 1970 and was expanded to its existing configuration in 1980. The harbor accommodates a large array of commercial, charter, government, recreation, and subsistence vessels.

This project was authorized by general language in section 5007 of Public Law 119–114, the Water Resources Development Act of 2007.

*Purpose and Need for Agency Action:* The existing Whittier Harbor is utilized beyond its capacity. The town of Whittier needs to expand the existing

harbor to a more efficient and safe harbor for navigation and moorage. The harbor is not able to appropriately accommodate the needs of larger commercial fishing vessels. Overcrowding of large vessels often results in increased damages to the vessels and docks. Overcrowding is also a problem for smaller commercial fishing, charter, and recreational vessels that use Whittier Harbor. The turning radius within the harbor is inadequate for these larger vessels. Inadequate boat launching facilities are causing significant upland congestion and delays to all harbor users.

Operators of larger vessels have expressed that they would be interested in using Whittier Harbor on a longer term basis if it were not as crowded and if suitable moorage were available. Many of these operators are known to travel as far as the Pacific Northwest for moorage. If suitable moorage were available in Whittier, they could save the costs of the trip back to the northwestern harbors in the continental US or other Alaska harbors. There are opportunities to save operating costs, and avoid opportunity costs of time for crews of these vessels by providing protected moorage at Whittier.

This EIS will assess the potential environmental impacts of constructing, operating, maintaining an expanded and/or new harbor as well as other reasonable alternatives. The EIS will aid decision making on the Whittier Harbor study by evaluating the environmental impacts of the range of reasonable alternatives, as well as providing a means for public input into the decision making process. USACE is committed to ensuring that the public has ample opportunity to participate in this review.

*Preliminary Alternatives:* Consistent with NEPA implementation requirements, this EIS will assess the range of reasonable alternatives regarding constructing, operating, and maintaining the proposed Whittier Harbor project. The following types of alternatives have been identified and are subject to modification in response to comments received during the public scoping process.

*Structural Alternatives:* This set of alternatives will investigate and describe harbor construction alternatives for various fleet sizes. Rubble mound breakwaters would be necessary for wave protection. Significant dredging would be required for the mooring basin and entrance channel and the alternatives may require maintenance dredging.

*Nonstructural Alternatives:* Nonstructural alternatives have not yet been identified at this stage of the study process.

*No Action Alternative:* Under the "no action" alternative, the Whittier Harbor would continue the "status quo" and over time become more crowded and safety issues would elevate.

USACE would appreciate comments regarding whether there are additional alternatives for the Whittier Harbor that should be considered.

*Identification of Environmental and Other Issues:* USACE intends to address the following environmental issues when assessing the potential environmental impacts of the alternatives in this EIS. Additional issues may be identified as a result of the scoping process. USACE invites comment from Federal agencies; State, local, and tribal governments; and the general public on these and any other issues that should be considered in the EIS:

- Potential impacts on health from the Whittier Harbor project include potential impacts to workers during the construction of the facilities.
- Potential impacts to surface water, tidelands and fauna include turbidity from construction activities.
- Potential impacts on air quality from emissions and from noise during harbor construction and operations.
- Potential cumulative impacts of the past, present, and reasonably foreseeable future actions include impacts resulting from harbor construction.
- Potential impacts to historically significant properties, if present, and on access to traditional use areas.
- Potential impacts on local, regional, or national resources from materials and utilities required for construction and operation.
- Potential impacts on ecological resources, including threatened and endangered species and water quality.
- Potential impacts on local employment, income, population, housing, and public services from harbor construction and operations.

*NEPA Process:* The EIS for the proposed project will be prepared pursuant to the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and USACE's NEPA Implementing Procedures (33 CFR parts 230 and 325). Following the publication of this Notice of Intent, USACE will continue the scoping process, prepare and distribute the draft EIS for public review, hold public hearings to solicit public comment on the draft EIS, and publish a final EIS. Not less than 30 days after the publication of the U.S. Environmental Protection Agency's Notice of Availability of the final EIS, USACE may issue a Record of Decision (ROD) documenting its decision concerning the proposed action.

*EIS Schedule:* The draft EIS is scheduled to be published no sooner than June 2010. A 45-day comment period on the draft EIS is planned, which will include public meetings to receive comments. Availability of the draft EIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media.

The final EIS for the Whittier Harbor project is scheduled for no sooner than January 2011. A ROD would be issued no sooner than 30 days after the U. S. Environmental Protection Agency notice of availability of the final EIS is published in the **Federal Register**.

Dated: June 22, 2009.

**Patricia S. Opheen,**

*Chief, Engineering Division.*

[FR Doc. E9–15834 Filed 7–2–09; 8:45 am]

BILLING CODE 3720–58–P

## DEPARTMENT OF EDUCATION

### Office of Innovation and Improvement; Overview Information; DC School Choice Incentive Program; Notice Reopening Fiscal Year (FY) 2009 Competition for the DC School Choice Incentive Program.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.370A.

*Summary:* On April 23, 2009, we published in the **Federal Register** (74 FR 18567) a notice inviting applications for new awards for FY 2009 for the DC School Choice Incentive Program. The original notice for the FY 2009 DC School Choice Incentive Program competition established a May 26, 2009, deadline date for eligible applicants to apply for funding under this program. The notice in the **Federal Register** required applicants for this competition to submit their applications in paper format by mail or hand delivery. The application package and instructions on the Department's Web site, however, mistakenly instructed applicants to use the e-Grants.ed.gov Web site. Because of the differing instructions, we are reopening and establishing a new deadline for the submission of applications for the FY 2009 competition for the DC School Choice Incentive Program competition. Applicants must refer to the notice inviting applications for new awards that was published in the **Federal Register** on April 23, 2009 (74 FR

18567) for all other requirements concerning this reopened competition.

The new deadline date is:

*Deadline for Transmittal of Applications:* July 13, 2009.

Applications for grants under this competition must be submitted in paper format by mail or hand delivery. For information (other than the deadline for submission) about how to submit your application, please refer to section IV.6. *Other Submission Requirements* in the April 23, 2009 **Federal Register** notice (74 FR 18527).

**Note:** For all applicants who previously submitted an application in accordance with the April 23, 2009 **Federal Register** notice with the original application deadline of May 26, 2009; you must submit a new application. The current application package is posted on the program's Web site at: *http://www.ed.gov/programs/dcchoice/applicant.html.*

*For Further Information Contact:* Michelle Armstrong, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W217, Washington, DC 20202–5970. Telephone: (202) 205–1729 or by e-mail at *Michelle.Armstrong@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.

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

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

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

Dated: June 30, 2009.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. E9–15878 Filed 7–2–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

**DATES:** Monday, July 27, 2009, 1 p.m.–4 p.m.; Tuesday, July 28, 2009, 8:30 a.m.–4 p.m.

**ADDRESSES:** The North Augusta Municipal Center, 100 Georgia Avenue, North Augusta, SC 29841.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–7886.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

**Monday, July 27, 2009**

1 p.m. Combined Committee Session.
4 p.m. Adjourn.

**Tuesday, July 28, 2009**

8:30 a.m. Approval of Minutes, Agency Updates. Public Comment Session. Chair and Facilitator Updates. Administrative Committee Report. Strategic and Legacy Management Committee Report. Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Waste Management Committee Report. Nuclear Materials Committee Report. Facility Disposition and Site Remediation Committee Report. Public Comment Session.
4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, July 27, 2009.

*Public Participation:* The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Gerri Flemming at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html.*

Issued at Washington, DC on June 29, 2009.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E9–15781 Filed 7–2–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency Information Collection Activities: Submission for OMB Review; Comment Request.

**SUMMARY:** The EIA has submitted the form OE–781R, "Monthly Electricity Imports and Exports Report" to the Office of Management and Budget (OMB) for review and comment of a proposed three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

**DATES:** Comments must be filed by August 5, 2009. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

**ADDRESSES:** Send comments to Christine Kymn, OMB Desk Officer for DOE,

Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Christine_J._Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 586–6264.

**SUPPLEMENTARY INFORMATION:** This section contains the following information about the energy information collection submitted to OMB for review: (1) OMB No. OE–781R, "Monthly Electricity Imports and Exports Report"; (2) *Sponsor:* Office of Electricity Delivery and Energy Reliability (OE); (3) *Current OMB docket number:* 1901–0296; (4) *Type of request:* three-year extension; (5) *Response obligation:* Mandatory; (6) *Purpose:* OE–781R collects electrical import/export data from entities authorized to export electric energy, and from entities holding Presidential Permits to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are used by Fossil Energy to monitor the levels of electricity imports and exports and are also used by EIA for publication. (7) *Respondents:* Holders of Presidential Permits are required to report; and (8) *Estimate of the total annual reporting burden:* 3,656 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

**Statutory Authority:** 10 CFR 205.308, 10 CFR 205.325, and Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, June 30, 2009.

**Renee H. Miller,**

*Director, Forms Clearance and Information Quality Division, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. E9–15912 Filed 7–2–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13447–000]**

### McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 25, 2009.

On April 29, 2009, McGinnis, 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 McAlpine Hydrokinetic Project, located on the Ohio River, in Jefferson County, Kentucky, and Clark County, Indiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A 100 to 300-foot-long by 20 to 52-foot-wide barge spudded down to the riverbed; (2) 10 6–8-foot-long by 6–8-foot-diameter turbine-generators mounted in line along the side of the barge; (3) one armored, high-voltage cable transmitting the generated power to the existing transmission line located adjacent to the proposed project area; and (4) appurtenant facilities. The proposed project would generate about 1,533 megawatt-hours.

*Applicant Contact:* Bruce D. McGinnis, Sr., McGinnis, Inc., P.O. Box 534, 502 Second St. Ext., South Point, OH 45680, phone: (740) 377–4391.

*FERC Contact:* Sergiu Serban, 202–502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13447) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15736 Filed 7–2–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13445–000]**

### McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 25, 2009.

On April 29, 2009, McGinnis, 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 Newburgh Hydrokinetic Project, located on the Ohio River, Henderson County, Kentucky, and Warrick County, Indiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*The proposed project would consist of:* (1) A 100 to 300-foot-long by 20 to 52-foot-wide barge spudded down to the riverbed; (2) 10 6–8-foot-long by 6–8-foot-diameter turbine-generators mounted in line along the side of the barge; (3) one armored, high-voltage cable transmitting the generated power to the existing transmission line located

adjacent to the proposed project area; and (4) appurtenant facilities. The proposed project would generate about 1,533 megawatt-hours.

*Applicant Contact:* Bruce D. McGinnis, Sr., McGinnis, Inc., P. O. Box 534, 502 Second St. Ext., South Point, OH 45680, phone: (740) 377–4391.

*FERC Contact:* Sergiu Serban, 202–502–6211.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13445) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15735 Filed 7–2–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13439–000]**

### Wax Lake Outlet Project, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 25, 2009.

On April 29, 2009, Wax Lake Outlet Project, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Wax Lake Outlet Project, to be located on the Wax Lake outlet in St. Mary's Parish, Louisiana.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*The proposed Wax Lake Outlet Project consists of:* (1) 8,870 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 354.8 megawatts; (2) a 13-mile-long, 34.5 kilovolt transmission line; and (3) appurtenant facilities. The proposed Wax Lake Outlet Project would have an average annual generation of 1,554.09 gigawatt-hours.

*Applicant Contact:* Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226–1531.

*FERC Contact:* Kim Carter, 202–502–6486.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13439) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15734 Filed 7–2–09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13417–000]**

### Western Technical College; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment; Motions To Intervene, and Competing Applications

June 25, 2009.

On March 30, 2009, Western Technical College filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Angelo Dam Project, to be located on the La Crosse River in Monroe County, Wisconsin, and near the town of Sparta, Wisconsin.

*The proposed project would consist of:* (1) The existing Angelo dam consisting of a 124-foot-long right earth embankment, a 91.5-foot-long, 20-foot-high concrete gravity spillway structure, and a 405-foot-long left earth embankment; (2) an existing 52-acre impoundment with 140 acre-feet of usable storage; (3) a proposed 9-foot-diameter intake structure on the right side of the spillway; (4) a proposed forebay; (5) a proposed 20 by 40 by 28-foot powerhouse containing one generating unit with a capacity of 205 kilowatts; and (5) a 1,540-foot-long, 600 volt transmission line. The project would have an estimated average annual generation of 948,500 kilowatt-hours.

*Applicant Contact:* Mr. Stephen C. Doret, Mill Road Engineering, 23 Mill Rd., Westborough, MA 01581, phone (508) 366–5833.

*FERC Contact:* Michael Spencer, (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project 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–13417) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15733 Filed 7–2–09; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12607–004]**

### Massena Electric Department; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 25, 2009.

On February 3, 2009, Massena Electric Department filed an application for a subsequent preliminary permit pursuant to section 4(f) of the Federal Power Act, to study the feasibility of the Massena Grasse Hydroelectric Project No. 12607–004, to be located in the Town of Massena, on the Grasse River, in St. Lawrence County, New York.

The proposed Massena Grasse Project would consist of: (1) A new 22-foot-high, 245-foot-long concrete gravity dam and a 300-acre impoundment with a normal water surface elevation of 178 feet mean sea level; (2) a new powerhouse containing one generating unit having an installed capacity of 2.5 megawatts; (3) a new 23-kilovolt, 0.25-mile-long transmission line; and (4) appurtenant facilities. The project would have an estimated annual generation of 9,600 megawatt-hours that would be used by the Town of Massena Electric Department.

*Applicant Contact:* Mr. Andrew McMahon, P.E., Superintendent; the Town of Massena Electric Department; 71 East Hatfield Street; Massena, New York; 13662 (315) 764–0253, Fax (315) 764–1498, and e-mail *mcmahon@med.massena.ny.us.*

*FERC Contact:* Patrick Murphy, (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12607) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15732 Filed 7–2–09; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2985–006]**

### MeadWestvaco Corporation; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

June 25, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2985–006.

c. *Date Filed:* April 29, 2009.

d. *Applicant:* MeadWestvaco Corporation.

e. *Name of Project:* Willow Mill Hydroelectric Project.

f. *Location:* On the Housatonic River in the Town of Stockbridge, Berkshire County, Massachusetts. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Thomas A. Beebe, Senior Engineering Project Manager, MeadWestvaco, MW Custom Papers, LLC, P.O. Box 188, South Lee, MA 01260, (413) 243 5938, thomas.beebe@mwv.com.

i. *FERC Contact:* Kristen Murphy (202) 502–6236 or *kristen.murphy@ferc.gov.*

j. The deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway 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 (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. For a simpler method of submitting text-only comments, click on "Quick Comment."

k. This application has been accepted for filing and is ready for environmental analysis.

l. The existing Willow Mill Project consists of: (1) A 14-foot-high, 150-foot-wide stone masonry gravity dam; (2) an 11-acre impoundment; (3) a 10-foot-deep, 18-foot-wide, 50-foot-long rubble and masonry canal connected to a 10-foot-deep, 18-foot-wide, 260-foot-long rubble and masonry underground headrace; (4) two 5.5-foot-long, 8-foot diameter steel penstocks; (5) a 100-kW turbine generating unit; and (6) a 210-foot-long discharge pipe releasing water back into the Housatonic River. The turbine generating unit is located in the basement of MeadWestvaco's paper mill. There are no transmission lines associated with the project as all of the power is used for internal use at the Willow Mill.

The applicant proposes to continue to operate the project in run-of-river mode with an increase in minimum flow in the 700-foot-long bypass reach from 1.4 cubic feet per second (cfs) to 122 cfs or inflow, whichever is less. The applicant

estimates that the total average annual generation, with the proposed minimum flow, would be approximately 256 megawatt-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 at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* 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. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY 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 protesting or intervening; 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. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

| MILESTONE | TARGET DATE |
|---|---|
| Filing of interventions, comments, recommendations, preliminary terms and conditions, and fishway prescriptions. | August 24, 2009 |
| Commission issues EA. | December 22, 2009 |
| Filing of comments on EA. | January 21, 2010 |
| Filing of modified terms and conditions. | March 22, 2010 |

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (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. E9–15729 Filed 7–2–09; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI09–10–000]**

### Ed and Renee Schofield; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

June 25, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI09–10–000.

c. *Date Filed:* June 2, 2009.

d. *Applicant:* Ed and Renee Schofield.

e. *Name of Project:* Marble Creek Hydroelectric Project.

f. *Location:* The proposed Marble Creek Hydroelectric Project will be located on Marble Creek, on Carroll Inlet on Revillagigedo Island, Ketchikan Gateway Borough, near Ketchikan, Alaska, affecting T. 73 S, R. 93 E, sec. 28, Copper River Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Ed Schofield, 120 Carlanna Lake road (TSS), Ketchikan, AK 99901; telephone: (907) 247–1431; e-mail: *http://www.ewschofield@gmail.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov*

j. *Deadline for filing comments, protests, and/or motions:* July 27, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Please include the docket number (DI09–10–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Marble Creek Hydropower Project will include: (1) A 50-foot-long, 5-foot-high intake structure on Marble Creek; (2) a 48-inch diameter, 850-foot-long penstock; (3) a powerhouse containing a 500-kW Francis-type generator; and (4) appurtenant facilities. The proposed project will not be connected to an interstate grid. The project will not occupy federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly

modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", and/or "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15737 Filed 7–2–09; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[EG09–34–000, EG09–35–000]**

### PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

June 25, 2009.

Take notice that during the month of May 2009, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations 18 CFR 366.7(a).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15730 Filed 7–2–09; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL09–21–001]**

### PacifiCorp; Notice of Filing

June 25, 2009.

Take notice that on June 22, 2009, PacifiCorp submitted for filing a compliance filing pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824(e) and the Commission's May 21, 2009 Order, 127 FERC 61,144 (2009).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on July 13, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–15731 Filed 7–2–09; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**[Regional Docket Nos. V–2007–1, FRL–8926–6]**

### Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for WE Energies Oak Creek Station

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on petition to object to Clean Air Act (Act) operating permit.

**SUMMARY:** This document announces that the EPA Administrator has responded to a petition asking EPA to object to an operating permit issued by the Wisconsin Department of Natural Resources (WDNR). Specifically, the Administrator granted in part and denied in part the petition submitted by the Sierra Club to object to the operating permit for WE Energies Oak Creek Station (Oak Creek).

Pursuant to section 505(b)(2) of the Act, a Petitioner may seek in the United States Court of Appeals for the appropriate circuit judicial review of those portions of a petition which EPA denied. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

**ADDRESSES:** You may review copies of the final order, the petition, and other supporting information at the EPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Oak Creek petition is available electronically at: *http://www.epa.gov/region07/*

*programs/artd/air/title5/petitiondb/petitiondb.htm.*

**FOR FURTHER INFORMATION CONTACT:** Pamela Blakley, Chief, Air Permits Section, Air Programs Branch, Air and Radiation Division, EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–4447.

**SUPPLEMENTARY INFORMATION:** The Act affords EPA a 45-day period to review, and object, as appropriate, to operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of the EPA review period to object to a state operating permit if EPA has not done so. A petition must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise issues during the comment period, or the grounds for the issues arose after this period.

On August 23, 2007, EPA received a petition from the Sierra Club requesting that EPA object to the Title V operating permit for Oak Creek. The Petitioner alleges that the permit is not in compliance with the requirements of the Act. Specifically, the Petitioner alleges that: (1) The permit must include a compliance schedule; (2) the permit application contains a false certification of compliance; (3) the permit application does not contain sufficient information to determine the applicability of the Prevention of Significant Deterioration program; (4) physical changes to the boilers at units 5 and 6 are subject to lower particulate matter (PM) emissions limits than are contained in the permit; (5) the permit must establish compliance demonstration requirements that ensure continuous compliance with emissions limits; (6) the facility's Compliance Assurance Monitoring (CAM) plan is deficient; (7) the facility's CAM plan ignores condensable PM; (8) the permit illegally exempts Oak Creek from applicable limits during start-up, shutdown, and malfunction; (9) plans referenced in the permit must be included in the permit and made available for public comment; and (10) the permit must require that the source submit all monitoring data and recordkeeping to the WDNR. On June 12, 2009, the Administrator issued an order granting the Oak Creek petition in part, and denying it in part. The order explains the reasons behind EPA's conclusion.

Dated: June 24, 2009.

**Walter W. Kovalick Jr.,**

*Acting Regional Administrator, Region 5.*

[FR Doc. E9–15806 Filed 7–2–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8926–8]**

### Farm, Ranch, and Rural Communities Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of cancellation of a meeting.

**SUMMARY:** The Environmental Protection Agency, Office of Cooperative Environmental Management, announces the cancellation of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). This meeting, a teleconference on July 13, 2009, was announced in a **Federal Register** Notice published on June 9, 2009 (74 FR 27316). The purpose of this meeting was for the FRRCC to discuss and approve various draft advice letters for submission to the EPA.

**FOR FURTHER INFORMATION CONTACT:** Alicia Kaiser, Designated Federal Officer, *kaiser.alicia@epa.gov,* 202–564–7273, U.S. EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or Christopher Ashcraft, Junior Designated Federal Officer, *ashcraft.christopher@epa.gov,* 202–564–2432, U.S. EPA, Office of the Administrator (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: June 25, 2009.

**Alicia Kaiser,**

*Designated Federal Officer.*

[FR Doc. E9–15799 Filed 7–2–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8926–2]**

### New York State Prohibition of Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Affirmative Determination

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency—Region 2, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the South Shore Estuary Reserve, New York. The waters of the proposed No Discharge Zone fall within the jurisdictions of the Town of Southampton, the Town of Brookhaven, the Town of Islip, the Town of Babylon, the Town of Oyster Bay and the Town of Hempstead. The entities submitted an application prepared by the Peconic Baykeeper for the designation of a Vessel Waste No Discharge Zone. New York State Department of Environmental Conservation certified the need for greater protection of the water quality.

**DATES:** Comments regarding this tentative determination are due by August 5, 2009.

**ADDRESSES:** Submit your comments using one of the following methods:

*E-mail: chang.moses@epa.gov.*

*Fax:* (212) 637–3891.

*Mail and hand delivery:* U.S. Environmental Protection Agency—Region 2, 290 Broadway, 24th Floor, New York, NY 10007–1866. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

**FOR FURTHER INFORMATION CONTACT:** Moses Chang, U.S. Environmental Protection Agency—Region 2, 290 Broadway, 24th Floor, New York, NY 10007–1866. Telephone: (212) 637–3867, Fax number: (212) 637–3891; e-mail address: *chang.moses@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency—Region 2, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for South Shore Estuary Reserve (SSER) and its harbors, bays and creeks within the following boundaries:

East Rockaway Inlet, approach to Reynolds Channel, flashing green buoy (N "9")
N40°-35.5′
W73°-44.9′

Jones Inlet, Jones Inlet red buoy (N "8")
N40°-35.2′

W73°-34.3′
Fire Island Inlet, Fire Island Inlet flashing red buoy (N "10")
N40°-37.5′
W73°-17.9′
Moriches Inlet, flashing red tower on east jetty terminus
N40°-45.8′
W72°-45.3′
Shinnecock Inlet, flashing green tower on west jetty terminus
N40°-50.2′
W72°-28.7′

The SSER encompasses 110,720 acres of open water and intertidal area. The waterbodies included in the SSER are Shinnecock Bay (East and West), Quantuck Bay, Moriches Bay (East and West), Bellport Bay, Patchogue Bay, Nicoll Bay, Great South Bay (West, East and Great Cove), South Oyster Bay, East Bay Complex, Middle Bay Complex and Western South Shore Bay.

New York has provided documentation indicating the SSER vessel population and the number of pumpouts for each embayment. Shinnecock Bay—East is serviced by 3 pumpouts and has a vessel population of 864 (288 vessels per pumpout). Shinnecock Bay—West is serviced by 1pumpout and has a vessel population of 1841 (1841 vessels per pumpout). Quantuck Bay is serviced by 1 pumpout and has a vessel population of 363 (363 vessels per pumpout). Moriches Bay—East is serviced by 2 pumpouts and has a vessel population of 951 (476 vessels per pumpout). Moriches Bay—West is serviced by 5 pumpouts and has a vessel population of 1829 (366 vessels per pumpout). Bellport Bay is serviced by 2 pumpouts and has a vessel population of 336 (168 vessels per pumpout). Patchogue Bay is serviced by 11 pumpouts and has a vessel population of 2814 (256 vessels per pumpout). Nicoll Bay is serviced by 6 pumpouts and has a vessel population of 1765 (294 vessels per pumpout). Great South Bay—East and Great Cove is serviced by 7 pumpouts and has a vessel population of 1810 (259 vessels per pumpout). Great South Bay—West is serviced by 12 pumpouts and has a vessel population of 5066 (422 vessels per pumpout). South Oyster Bay is serviced by 5 pumpouts and has a vessel population of 1453 (291 vessels per pumpout). East Bay Complex is serviced by 4 pumpouts and has a vessel population of 747 (187 vessels per pumpout). Middle Bay Complex is serviced by 8 pumpouts and has a vessel population of 3392 (424 vessels per pumpout). Western South Shore Bay is serviced by 2 pumpouts and has a vessel population of 705 (352 vessels per pumpout).

The criterion established by the Clean Vessel Act regarding an adequate number of pumpouts per vessel population is 1 pumpout per 300—600 vessels. All areas of the SSER meet or exceed this criterion with the exception of Shinnecock Bay—West, which has one pumpout per 1841vessels. When facilities in this embayment are added to facilities in the adjacent waters (Shinnecock Bay—East and Quantuck Bay) a total of 5 pumpouts service a vessel population of 2492. The ratio is one pumpout per 498 vessels, which meets the criterion.

The facilities located in the Shinnecock Bay—East are as follows:

*Name:* Sherry and Joe Corrs Best Boat Works.
*Lat/Long:* N40.97938 W72.43858.
*Phone:* 631–283–7359.
*VHF Channel:* N/A.
*Dates of Operation:* Spring—Summer.
*Hours of Operation:* 9 a.m.—5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* None/4.5 feet.
*Method of Sewage Disposal:* Private contractor.

*Name:* Shinnecock Canal County Marina.
*Lat/Long:* N40.884444 W72.501944.
*Phone:* 631–852–8291 or 631–852–8899.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–October 31.
*Hours of Operation:* 24 hours.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 60 feet/8feet.
*Method of Sewage Disposal:* Holding tank pumped out by septic truck.

*Name:* Southampton Town Pumpout Boat.
*Lat/Long:* N/A.
*Phone:* 631–283–6000.
*VHF Channel:* 73.
*Dates of Operation:* April–November.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Pumps out at Shinnecock Canal County Marina.

The facility servicing Quantuck Bay, Shinnecock Bay—West and Moriches Bay—East is as follows:

*Name:* Southampton Town Pumpout Boat.
*Lat/Long:* N/A.
*Phone:* 631–283–6000.
*VHF Channel:* 73.
*Dates of Operation:* April–November.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Pumps out at Shinnecock Canal County Marina.

The facility located in Moriches Bay—East is as follows:

*Name:* Remsenburg Marina.
*Lat/Long:* N40.8157 W72.72324.
*Phone:* 631–325–1677.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–November 1, 7 days a week.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 45 feet/4 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The facilities located in Moriches Bay—West are as follows:

*Name:* Windswept Marina.
*Lat/Long:* N40.791389 W72.753333.
*Phone:* 631–878–2100.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 45 feet/6 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Senix Marina.
*Lat/Long:* N40.795 W72.805833.
*Phone:* 631–874–2092.
*VHF Channel:* N/A..
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 45 feet/4 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Waterways Marina.
*Lat/Long:* N40.78756 W72.81813.
*Phone:* 631–874–8066.
*VHF Channel:* N/A.
*Dates of Operation:* March 15–November 15.
*Hours of Operation:* 8 a.m.–4 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 60 feet/4 feet.
*Method of Sewage Disposal:* Pumped into sewage treatment plant.

*Name:* Brookhaven Town Marina.
*Lat/Long:* N40.80199 W72.83084.
*Phone:* 631–395–3993.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 45 feet/4 feet.
*Method of Sewage Disposal:* Waste emptied weekly and disposed of by contractor.

*Name:* Brookhaven Town Pumpout Boat.
*Lat/Long:* N/A.
*Phone:* N/A.
*VHF Channel:* 73.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The facility located in Bellport Bay is as follows:

*Name:* Beaver Dam Boat Marina.
*Lat/Long:* N40.77222 W72.91778.
*Phone:* 631–286–7816.
*VHF Channel:* 73.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 45 feet/4 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The facilities located in Patchogue Bay are as follows:

*Name:* Patchogue Shores Marina.
*Lat/Long:* N40.75 W72.975278.
*Phone:* 631–475–0790.
*VHF Channel:* 73.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 45 feet/4 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Brookhaven Town Pumpout Boats (2), these boats also service vessels in Bellport Bay and Moriches Bay—West.
*Lat/Long:* N/A.
*Phone:* N/A.
*VHF Channel:* 73.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Dockside Mobile Pumpout—pumpout boat and mobile truck
*Lat/Long:* N/A.
*Phone:* 631–447–1189.
*VHF Channel:* N/A.
*Dates of Operation:* All year.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* Varies based on location.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Morgan's Swan Marina.
*Lat/Long:* N40.7481 W72.99726.
*Phone:* 631–785–3524.
*VHF Channel:* 73.
*Dates of Operation:* Memorial Day–September.
*Hours of Operation:* Tuesday–Sunday, 10 a.m.–4 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 34 feet/5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Watch Hill.
*Lat/Long:* N40.69147 W72.98933.
*Phone:* 631–597–3109.
*VHF Channel:* 9.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 45 feet/4.5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Davis Park Marina.
*Lat/Long:* N40.68581 W73.00312.
*Phone:* 631–597–6830.
*VHF Channel:* 9.
*Dates of Operation:* Every day from the third week of May through the end of October.
*Hours of Operation:* 8 a.m.–9 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 40 feet/3.5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Sandspit Marina.
*Lat/Long:* N40.74715 W73.01513.
*Phone:* 631–475–1592.
*VHF Channel:* 9.
*Dates of Operation:* May–November.
*Hours of Operation:* 24 hours a day.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 35+ feet/2 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Island View Marina.
*Lat/Long:* N40.75035 W73.01805.
*Phone:* 631–447–1234.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–December 15.
*Hours of Operation:* Monday–Thursday 8 a.m.–6 p.m., Friday–Sunday 8a.m.–8 p.m.
*Fee:* $10.
*Vessel Limitation Length/Draught:* 65 feet/5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Leeward Cove Marina.
*Lat/Long:* N40.75619 W73.01926.
*Phone:* 631–654–3106.
*VHF Channel:* N/A.
*Dates of Operation:* All year.
*Hours of Operation:* 9 a.m.–5 p.m.
*Fee:* $1.00 (Coin operated).
*Vessel Limitation Length/Draught:* 50 feet/6 feet.
*Method of Sewage Disposal:* Cesspool.

*Name:* Blue Point Marina.
*Lat/Long:* N40.74679 W73.02737.
*Phone:* 631–363–6045.
*VHF Channel:* N/A.
*Dates of Operation:* May–November.
*Hours of Operation:* 24 hours.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 32 feet/6 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Browns River Marina.
*Lat/Long:* N40.7250 W73.0706.
*Phone:* 631–589–5550.
*VHF Channel:* N/A.
*Dates of Operation:* Year round.
*Hours of Operation:* 24 hours.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 60 feet/6 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The facilities located in Nicoll Bay are as follow:

*Name:* West Sayville Boat Basin.
*Lat/Long:* N40.72117 W73.09324.
*Phone:* 631–589–4141.
*VHF Channel:* N/A.
*Dates of Operation:* All Year (self serve March 1–December 1).
*Hours of Operation:* 24 hours.
*Fee:* $5 (voluntary).
*Vessel Limitation Length/Draught:* None/5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Sailors Haven.
*Lat/Long:* N40.65714 W73.10440.
*Phone:* 631–597–6171.
*VHF Channel:* N/A.
*Dates of Operation:* May 15–October 15.
*Hours of Operation:* 24 hours.
*Fee:* Free.
*Vessel Limitation Length/Draught:* None/2.5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Timber Point East County Marina.
*Lat/Long:* N40.71273 W73.14414.
*Phone:* 631–854–0938.
*VHF Channel:* N/A.
*Dates of Operation:* June–October.
*Hours of Operation:* 7 a.m.–7 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 40 feet/4.5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Heckster State Park.
*Lat/Long:* N40.70332 W73.14691.

*Phone:* 631–581–2100.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 7 .a.m.–Sunset.
*Fee:* Free with entrance fee to park.
*Vessel Limitation Length/Draught:* None/3 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The facilities located in Great South Bay—East and Great Cove are as follows:

*Name:* Atlantique Marina.
*Lat/Long:* N40.64340 W73.17353.
*Phone:* 631–583–8610.
*VHF Channel:* 9.
*Dates of Operation:* When Marina is open during boating season.
*Hours of Operation:* 9 a.m.–6:30 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* None/10 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* East Islip Marina.
*Lat/Long:* N40.70744 W73.18954.
*Phone:* 631–224–5413.
*VHF Channel:* N/A.
*Dates of Operation:* During Marina Season.
*Hours of Operation:* 8 a.m.–4 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* None/6 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Islip Pumpout Boat.
*Lat/Long:* N/A.
*Phone:* N/A.
*VHF Channel:* 73.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 7 a.m.–Sunset.
*Fee:* Free.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Bay Shore Marina.
*Lat/Long:* N40.71276 W73.23727.
*Phone:* 631–224–5648.
*VHF Channel:* 73.
*Dates of Operation:* April 1– , November 1.
*Hours of Operation:* 7 a.m.–Sunset.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 30 feet/3 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Captree State Park.
*Lat/Long:* N40.64208 W73.25290.
*Phone:* 631–321–3533.
*VHF Channel:* 73.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 7 a.m.–Sunset.
*Fee:* Free.
*Vessel Limitation Length/Draught:* None/3 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Robert Moses State Park.
*Lat/Long:* N40.62483 W73.26657.
*Phone:* 631–669–1000 or 631–669–0470.
*VHF Channel:* 73.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 7 a.m.–sunset.
*Fee:* Free.
*Vessel Limitation Length/Draught:* None/3 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The facilities located in Great South Bay—West are as follows:

*Name:* Babylon Fishing Station.
*Lat/Long:* N40.686111 W73.31611.
*Phone:* 631–669–4503.
*VHF Channel:* 78.
*Dates of Operation:* April 1–December 1.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* Unlimited/5 feet.
*Method of Sewage Disposal:* Waste pumped directly into the sewer system.

*Name:* Babylon Marine.
*Lat/Long:* N40.68646 W73.32479.
*Phone:* 631–587–0333.
*VHF Channel:* N/A.
*Dates of Operation:* Spring and Summer.
*Hours of Operation:* Monday–Saturday 8 a.m.–5 p.m., Sunday 9 a.m.–5 p.m.
*Fee:* Free with gas purchase, $10 without.
*Vessel Limitation Length/Draught:* None/4 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.

*Name:* Bergen Point Marina.
*Lat/Long:* N40.677222 W73.338056.
*Phone:* 631–957–7440.
*VHF Channel:* N/A.
*Dates of Operation:* May–November.
*Hours of Operation:* 24 hours/7 days.
*Fee:* Free.
*Vessel Limitation Length/Draught:* Unlimited.
*Method of Sewage Disposal:* Bergen Point STP.

*Name:* Cedar Beach Marina.
*Lat/Long:* N40.635156 W73.34457.
*Phone:* 631–669–5949.
*VHF Channel:* N/A.
*Dates of Operation:* Weekends beginning 2nd weekend of May, full-time June 28–Columbus Day.
*Hours of Operation:* 24 hours a day.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 45 feet/14 feet.
*Method of Sewage Disposal:* Settling pools onsite, truck pumpout if necessary.

*Name:* Surfside 3 Marina.
*Lat/Long:* N40.66984 W73.35807.
*Phone:* 631–957–5900.
*VHF Channel:* N/A.
*Dates of Operation:* All Year.
*Hours of Operation:* 8 a.m.–8 p.m.
*Fee:* Free with gas purchase, $10 without.
*Vessel Limitation Length/Draught:* 50 feet/4 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.

*Name:* Boatland.
*Lat/Long:* N40.675556 W73.358611.
*Phone:* 631–957–5550.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–October 1.
*Hours of Operation:* Monday–Thursday 8 a.m.–5 p.m., Friday–Sunday 7 a.m.–7 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 50 feet/5 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.

*Name:* The Anchorage.
*Lat/Long:* N40.67066 W73.35812.
*Phone:* 631–225–5656.
*VHF Channel:* N/A.
*Dates of Operation:* April–October.
*Hours of Operation:* 9 a.m.–7 p.m.
*Fee:* $10.
*Vessel Limitation Length/Draught:* 60 feet/5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* LaSala Boat Yard.
*Lat/Long:* N40.5931 W73.5403.
*Phone:* 516–623–5757.
*VHF Channel:* N/A.
*Dates of Operation:* Boating Season.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 40 feet/4 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.

*Name:* Tanner Park.
*Lat/Long:* N40.66023 W73.39365.
*Phone:* 631–789–4159.
*VHF Channel:* N/A.
*Dates of Operation:* Boating Season.
*Hours of Operation:* 24 hours a day.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 60 feet/5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

*Name:* Gilgo Beach Marina.
*Lat/Long:* N40.61879 W73.39796.

*Phone:* 631–826–1255.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* Monday–Friday 8 a.m.–5 p.m., Saturday and Sunday 7 a.m.–7 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 60 feet/4.5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.
*Name:* Delmarine, Inc.
*Lat/Long:* N40.66333 W73.4225.
*Phone:* 631–598–2946.
*VHF Channel:* N/A.
*Dates of Operation:* Boating Season.
*Hours of Operation:* Monday–Friday 8 a.m.–5 p.m., Saturday 8 a.m.–12 p.m.
*Fee:* Available only to private slip users.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.

The facilities located in South Oyster Bay are as follows:

*Name:* TOBAY Heading Marina.
*Lat/Long:* N40.615 W73.426667.
*Phone:* 516–679–3900.
*VHF Channel:* 16.
*Dates of Operation:* Memorial Day–October.
*Hours of Operation:* 9 a.m.–7 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 45 feet/4 feet.
*Method of Sewage Disposal:* 2 cesspools and leaching field, pump truck if needed.
*Name:* Town of Oyster Bay Pumpout Boat.
*Lat/Long:* N/A.
*Phone:* 516–679–3900.
*VHF Channel:* 9.
*Dates of Operation:* Memorial Day–October.
*Hours of Operation:* 9 a.m.–7 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Empties at TOBAY Marina.
*Name:* Treasure Island Marine Basin Corp.
*Lat/Long:* N40.649444 W73.498056.
*Phone:* 516–221–7156.
*VHF Channel:* N/A.
*Dates of Operation:* April–November.
*Hours of Operation:* Weekdays 8 a.m.–5 p.m., Weekends 9 a.m.–4 p.m.
*Fee:* Free for customers, $20 otherwise.
*Vessel Limitation Length/Draught:* 35 feet/5 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer sytem.
*Name:* Precision Marina.
*Lat/Long:* N40.647222 W73.498611.
*Phone:* 516–785–3013.
*VHF Channel:* N/A.
*Dates of Operation:* April–November.
*Hours of Operation:* Summer 8 a.m.–6 p.m., Winter 8 a.m.–4 p.m.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 35/5 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.

The facilities located in East Bay Complex are as follows:

*Name:* Wantagh County Park.
*Lat/Long:* N40.645556 W73.514722.
*Phone:* 516–571–7460.
*VHF Channel:* N/A.
*Dates of Operation:* April–November.
*Hours of Operation:* 24 hours a day.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 40 feet/5 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.
*Name:* Blue Water Yacht Club.
*Lat/Long:* N40.5931 W73.5403.
*Phone:* 516–623–5757.
*VHF Channel:* N/A.
*Dates of Operation:* April–November.
*Hours of Operation:* 24 hours a day.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 40 feet/5 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.

This facility services vessels in Western South Shore Bay, Middle Bay, and East Bay:

*Name:* Town of Hempstead Pumpout Boat.
*Lat/Long:* N/A.
*Phone:* 516–431–9200.
*VHF Channel:* 73.
*Dates of Operation:* Mid-May–October.
*Hours of Operation:* 9 a.m.–5 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* N/A.
*Method of Sewage Disposal:* Waste pumped into sewage treatment plant.

The facilities located in Middle Bay Complex are as follows:

*Name:* West End Boat Basin.
*Lat/Long:* N40.59056 W73.5556.
*Phone:* 516–785–1600.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–October 15.
*Hours of Operation:* 9 a.m.–4:30 p.m.
*Fee:* Free.
*Vessel Limitation Length/Draught:* 50 feet/7 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.
*Name:* Al Grover's High and Dry.
*Lat/Long:* N40.64417 W73.57333.
*Phone:* 516–546–8880.
*VHF Channel:* N/A.
*Dates of Operation:* April–October.
*Hours of Operation:* 8 a.m.–5 p.m.
*Fee:* $40.
*Vessel Limitation Length/Draught:* 35 feet/7 feet.
*Method of Sewage Disposal:* Waste pumped directly into sewer system.
*Name:* Guy Lombardo Marina.
*Lat/Long:* N40.629444 W73.58.
*Phone:* 516–378–3417.
*VHF Channel:* N/A.
*Dates of Operation:* April 1–November 1.
*Hours of Operation:* 24 hours a day.
*Fee:* Free.
*Vessel Limitation Length/Draught:* None/5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.
*Name:* Town of Hempstead East Marina.
*Lat/Long:* N40.59361 W73.584722.
*Phone:* 516–897–4128.
*VHF Channel:* N/A.
*Dates of Operation:* April–November.
*Hours of Operation:* Monday–Thursday 9 a.m.–5 p.m., Friday–Sunday 6 a.m.–6 p.m., Self service 24 hours a day.
*Fee:* Free.
*Vessel Limitation Length/Draught:* None/5 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.
*Name:* Empire Point Marina.
*Lat/Long:* N40.61556 W73.64889.
*Phone:* 516–889–1067.
*VHF Channel:* N/A.
*Dates of Operation:* Year round.
*Hours of Operation:* Self service 24 hours.
*Fee:* $5.
*Vessel Limitation Length/Draught:* 100 feet/30 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The facility located in Western South Shore Bay is as follows:

*Name:* Crow's Nest Marina.
*Lat/Long:* N40.63597 W73.6577.
*Phone:* 516–766–2020.
*VHF Channel:* N/A.
*Dates of Operation:* May–October, Monday–Friday.
*Hours of Operation:* 9 a.m.–4 p.m.
*Fee:* Free for marina patrons, $25 for visitors.
*Vessel Limitation Length/Draught:* 35 feet/4 feet.
*Method of Sewage Disposal:* Waste emptied and disposed of by contractor.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from

all vessels are reasonably available for the South Shore Estuary Reserve in the Counties of Nassau and Suffolk, New York. A 30-day period for public comment has been opened on this matter which may result in a New York State prohibition of any sewage discharges from vessels in for the South Shore Estuary Reserve in the Counties of Nassau and Suffolk, New York.

Dated: June 25, 2009.

**George Pavlou,**

*Acting Regional Administrator, Region 2.*

[FR Doc. E9–15796 Filed 7–2–09; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Schedule Change; FCC To Hold Open Commission Meeting Thursday, July 2, 2009

July 1, 2009.

Please note that the time for the Federal Communications Commission Open Meeting is rescheduled from 10 a.m. to 11:30 a.m.

The Meeting will include a presentation on the status of the Commission's process for developing a National Broadband Plan and a presentation on the Digital Television transition.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–15922 Filed 7–1–09; 4:15 pm]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 09–1345]**

### Notice of Suspension and Initiation of Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Enforcement Bureau (the "Bureau") gives notice of Mr. Douglas A. Benit's suspension from the schools and libraries universal service support mechanism (or "E–Rate Program"). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Benit, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554.

**DATES:** Opposition requests must be received by August 5, 2009. However, an opposition request by the party to be suspended must be received 30 days from the receipt of the suspension letter or August 5, 2009, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

**FOR FURTHER INFORMATION CONTACT:** Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418–7931 or e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Michele Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 09–1345, which was mailed to Mr. Benit and released on June 17, 2009. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov*. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 2055, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

Federal Communications Commission.

**Hillary S. DeNigro,**

*Chief, Investigations and Hearings Division, Enforcement Bureau.*

The suspension letter follows:

June 17, 2009

DA 09–1345

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
AND E-MAIL (*edwishnow@aol.com*) AND FACSIMILE (248) 258–6007

Mr. Douglas A. Benit, c/o Edward C. Wishnow, 240 Daines, Birmingham, MI 48009

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–09–IH–0402

Dear Mr. Benit: The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of mail fraud, in violation of 18 U.S.C. 2, 1341, and 1346 in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.[2]

[1] Any further reference in this letter to "your conviction" refers to your guilty plea and subsequent conviction of one count of mail fraud. *United States* v. *Douglas A. Benit*, Criminal Docket No. 2:06CR20285–1, Plea Agreement (D. Mich. filed Nov. 24, 2008 and entered Nov. 25, 2008) ("*Douglas Benit Plea Agreement*"); *United States* v. *Douglas A. Benit*, Criminal Docket No. 2:06CR20285–1, Judgment (D. Mich. filed Mar. 31, 2009 and entered Apr. 1, 2009) ("*Douglas Benit Judgment*"). *See also United States* v. *Douglas A. Benit*, Criminal Docket No. 2:06CR20285, Indictment (D. Mich. filed May 24, 2006 and entered May 25, 2006) ("*Benit Indictment*"). You also plead guilty to one count of bank fraud, in violation of 18 U.S.C. 2 and 1344. *See Douglas Benit Plea Agreement; see also Douglas Benit Judgment*. This notice of suspension and initiation of debarment proceedings arises from your conviction of mail fraud, and as such, does not discuss your guilty plea and subsequent conviction of bank fraud.

[2] 47 CFR 54.8; 47 CFR 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) ("*Second Report and Order*") (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report

Continued

## I. Notice of Suspension

The Commission has established procedures to prevent persons who have "defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism" from receiving the benefits associated with that program.[3] On November 24, 2008, you, Douglas A. Benit,[4] plead guilty to mail fraud in connection with your participation in the E-Rate program.[5] Specifically, you were employed as a school official in the Ecorse Public Schools District ("EPS" or "District") from 1997 to 2003, serving first as the Director of Facility Development and subsequently as the Assistant Superintendent.[6] While employed at EPS, you were also an owner, employee, agent or subcontractor of Coral Technology, Inc. ("Coral").[7] During your tenure at EPS, you were responsible for approving the construction of new facilities in the District using funds from several sources, including the E-Rate program.[8] You admitted that while employed at EPS and while concealing your associations with Coral from EPS, you and others devised a scheme to defraud the District and the E-Rate program by steering contracts for EPS to various companies that directly or indirectly benefited you and your companies, primarily Coral.[9] In furtherance of the scheme, you submitted to the Universal Service Administrative Company ("USAC") documents supporting Coral's application for federal E-Rate funding, while employed at EPS and within the scope of your official responsibilities.[10] As a result of these contracts, which were paid in part from the E-Rate program, you and your company personally benefited from the fraudulent scheme by at least $2.276 million.[11]

On March 31, 2009, you were sentenced to serve forty-six months in federal prison, to be followed by thirty-six months of supervised release for your role in the scheme to defraud EPS and the E-Rate program. You were also ordered to pay $1.34 million in restitution for your role in the scheme.[12]

Pursuant to section 54.8(a)(4) of the Commission's rules,[13] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[14] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[15]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[16] Such requests, however, will not ordinarily be granted.[17] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[18] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[19]

## II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.[20] Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[21] Absent extraordinary circumstances, the Bureau will debar you.[22] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[23] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[24]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[25] The Bureau may, if necessary to protect the public interest, extend the debarment period.[26]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention

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and Order, 22 FCC Rcd 16372, 16410–12 (2007) (Program Management Order) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

[3] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission's debarment rules define a "person" as "[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized." 47 CFR 54.8(a)(6).

[4] Also known as J.D. Howen, D.J. Howen, and Jack Howen. *See Douglas Benit Indictment*.

[5] *See supra* note 1. See Douglas Benit Plea Agreement. See also Department of Justice Press Release (Mar. 26, 2009), *available at http://www.usdoj.gov/criminal/npftf/pr/press_releases/2009/mar/03-26-09benit-sentenced.pdf* (*DOJ March 2009 Press Release*). *See also Benit Indictment* at 18 (Count 4).

[6] *Benit Indictment* at 1–4; *see also Douglas Benit Plea Agreement* at 2–3.

[7] *See Benit Indictment* at 3.

[8] *Id.*

[9] *Id.* at 1–15, 18; *see also Douglas Benit Plea Agreement* at 2–3.

[10] *Benit Indictment* at 10–14.

[11] *See Douglas Benit Plea Agreement* at 3.

[12] *See Douglas Benit Judgment* at 1, 5 (ordering $1.34 million for your role in the schemes; $489,702 in restitution to the Ecorse Public Schools and $853,000 to USAC); *see also* DOJ *March 2009 Press Release* at 1.

[13] 47 CFR 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–27, ¶¶ 67–74.

[14] 47 CFR 54.8(a)(1)(d).

[15] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.8(e)(1).

[16] 47 CFR 54.8(e)(4).

[17] *Id.*

[18] 47 CFR 54.8(e)(5).

[19] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5), (f).

[20] "Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism." 47 CFR 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanism." 47 CFR 54.8(a)(1).

[21] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(3).

[22] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

[23] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.8(e)(5).

[24] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.8(f).

[25] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.8(d), (g).

[26] 47 CFR 54.8(g).

of Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Michele Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Michele Berlove, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *Rebekah.Bina@fcc.gov* and to *Michele.Berlove@fcc.gov*.

If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418–7931 or by e-mail at *Rebekah.Bina@fcc.gov*. If Ms. Bina is unavailable, you may contact Ms. Michele Berlove, Acting Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1477 and by e-mail at *Michele.Berlove@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro,
*Chief, Investigations and Hearings Division, Enforcement Bureau.*

cc: Taurus N. Ziedas, United States Attorney's Office, Department of Justice (via e-mail); Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)

[FR Doc. E9–15823 Filed 7–2–09; 8:45 am]
**BILLING CODE 6712–01–P**

## FEDERAL HOUSING FINANCE AGENCY

**[No. 2009–N–08]**

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of new systems of records with request for comments.

**SUMMARY:** In accordance with the Privacy Act of 1974 (Privacy Act), the Federal Housing Finance Agency (FHFA) is issuing public notice of its intent to establish and maintain three new Privacy Act systems of records covering the Federal Home Loan Bank System Directory, the Financial Management System, and the Correspondence Tracking System. The first system is titled "FHFA—1 Federal Home Loan Bank System Directory." The proposed system of records is necessary, as it will contain contact information for current Federal Home Loan Bank (Bank) presidents, chairs, vice chairs, directors, and senior staff; members of the Bank's Affordable Housing Advisory Councils (AHAC); and senior staff at the Banks, Office of Finance, and FHFA. The system will facilitate effective communications between the FHFA, Banks, and Office of Finance. The second system is titled "FHFA—2 Financial Management System." The proposed system of records is necessary, as it will contain financial and procurement records for prospective, present and former employees, contractors, and vendors of FHFA. The records may include names, social security numbers, credit card numbers, accounts, reimbursements, pay records, transactions, payment agreements, and certificates. The FHFA will use the system to ensure the orderly processing of administrative actions within the agency. The third new system is titled "FHFA—3 Correspondence Tracking System." The proposed system of records is necessary, as it will contain correspondence and records of communications between FHFA and individuals or entities submitting requests or inquiries to the agency. These records are collected and maintained to facilitate the orderly processing of correspondence by the agency and may include names, supporting documents, and contact information supplied by individuals or entities.

**DATES:** The addition of these three new systems of records will become effective on August 17, 2009 without further notice unless comments necessitate otherwise.

**ADDRESSES:** Submit comments to FHFA *only once*, identified by "2009–N–08", using any one of the following methods:

- *Mail/Hand Delivery:* Alfred M. Pollard, General Counsel, Attention: Comments/2009–N–08, Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Hand delivered packages should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail: RegComments@fhfa.gov.* Comments may be sent by e-mail to Alfred M. Pollard, General Counsel. Please include "Comments/2009–N–08" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to the FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Comments/2009–N–08. See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

**FOR FURTHER INFORMATION CONTACT:** John Major, Privacy Act Officer, *john.major@fhfa.gov* or 202–408–2849, or David A. Lee, Senior Agency Official for Privacy, *david.lee@fhfa.gov* or 202–408–2514 (not toll free numbers), Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington DC 20552. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

#### I. Comments

*Instructions:* FHFA seeks public comments on the three proposed new systems and will take all comments into consideration before issuing the final notice. *See* 5 U.S.C. 552a(e)(4) and (11). Comments should include "2009–N–08" and reference any or all titles your comment addresses: "FHFA—1 Federal Home Loan Bank System Directory"; "FHFA—2 Financial Management System."; or "FHFA—3 Correspondence Tracking System."

*Posting and Public Availability of Comments:* All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov*, and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

*Introduction:* This notice informs the public of FHFA's proposal to establish and maintain three new systems of records. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's system of records. It has been recognized by Congress that application of all requirements of the Privacy Act to certain categories of

records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Act as a rule in accordance with the Administrative Procedures Act. The Director of FHFA has determined that records and information in these three new systems of records are not exempt from requirements of the Privacy Act.

As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 2000, 65 FR 239, FHFA has submitted a report describing the three new systems of records covered by this notice, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

The proposed three new systems of records described above are set forth in their entirety below.

Dated: June 29, 2009.

**James B. Lockhart III,**

*Director, Federal Housing Finance Agency.*

**FHFA–1**

**SYSTEM NAME:**

Federal Home Loan Bank System Directory.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current Federal Home Loan Bank (Bank) presidents, chairs, vice chairs, directors and senior staff; members of the Bank's Affordable Housing Advisory Councils; and senior staff at the Office of Finance, and Federal Housing Finance Agency (FHFA).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records contain information such as name, role, organization, address, phone number, and e-mail address.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal Home Loan Bank Act (12 U.S.C. 1421–1449), as amended by the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008).

**PURPOSE(S):**

FHFA collects records to maintain current contact information and facilitate effective communications between individuals at FHFA, the Banks, and the Office of Finance.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

It shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. The Banks in order to provide contact information for individuals covered by the system.

2. The United States Department of Justice (DOJ) or another Federal agency conducting litigation, or any court or adjudicative or administrative body, if:

a. FHFA, any employee of FHFA in his/her official capacity or in his/her individual capacity if DOJ has agreed to represent the employee, or the United States or any agency thereof, is a party to or has a significant interest in the litigation or proceeding; and

b. FHFA determines that use of the records is relevant and necessary to the litigation or proceeding.

3. The appropriate Federal, State, local or foreign agency or authority responsible for auditing, investigating or prosecuting a violation or potential violation of a criminal or civil law, rule, or regulation or for enforcing or implementing a statute, rule, regulation, or order, if information in the system indicates such a violation.

4. Any source, including a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, but only to the extent necessary for FHFA to obtain information relevant to a decision concerning the hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

5. Another Federal agency if the records are relevant and necessary to carry out that agency's authorized functions and to the decision on a matter, including, but not limited to the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency.

6. The Office of Management and Budget in connection with the review of private relief legislation.

7. An authorized appeal grievance examiner, a formal complaints examiner, an equal employment opportunity investigator, or an arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

8. The Office of Personnel Management in connection with the evaluation and oversight of Federal personnel management concerning wages, benefits, retirement deductions, and other information necessary to carry out government-wide personnel functions, and to other Federal agencies to facilitate employee transfers.

9. Authorized employees of a Federal agency for purposes of an audit.

10. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

11. The DOJ to determine whether disclosure is required by the Freedom of Information Act (5 U.S.C. 552) (FOIA).

12. An individual or entity submitting a FOIA request if the information is subject to a FOIA exemption but the FHFA determines not to assert the exemption.

13. State and local taxing authorities if the Secretary of the Treasury has entered into an agreement, and the employee is subject to tax by that authority, whether or not tax is withheld.

14. Appropriate persons, consultants, contractors, entities or others when:

a. FHFA suspects or confirms that the security or confidentiality of information in a system of records has been compromised;

b. FHFA determines that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by FHFA or another agency or entity) that rely upon the compromised information; and

c. The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

15. The National Archives and Records Administration and the General Services Administration for records management inspections, surveys and studies and to determine whether the records have sufficient historical or other value to warrant accessioning into the National Archives of the United States.

16. FHFA personnel having a need for access to the records to perform their official functions.

17. A consultant, person, or entity that contracts or subcontracts with FHFA, to the extent necessary for the performance of the contract or subcontract and consistent with the purpose of the system, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

18. The U.S. Department of the Treasury, Federal debt collection centers, other appropriate Federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to FHFA or the Federal government. Disclosure will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status, and history of the debt.

19. The U.S. Department of the Treasury to effect issuance of wage payments through electronic funds transfer.

20. The Internal Revenue Service and Social Security Administration.

21. Federal, State and local agencies to assist in processing unemployment claims and enforcing child and spousal support obligations.

22. Federal, State and local government authorities, medical personnel, first responders and other emergency services personnel, and contractors, agency employees or others as necessary for continuity of operations planning, testing and execution, to ensure personnel accountability, or to respond to medical or other emergency situations.

23. Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored in electronic format.

**RETRIEVABILITY:**

Records can be retrieved by last name, first name, organization, Bank name, and role.

**SAFEGUARDS:**

System access is restricted to authorized users from FHFA, the Banks, and the Office of Finance according to fixed permission levels.

**RETENTION AND DISPOSAL:**

Records pertaining to a particular individual are retained for the length of the individual's term of service. Records are updated as information changes but at least annually.

**SYSTEM MANAGER(S) AND ADDRESS:**

Division for Bank Regulation, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552.

**NOTIFICATION PROCEDURES:**

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov*. The regular mail address is: Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The fax number is: 202–408–2580. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet "Privacy Act Request" in accordance with the procedures set forth in 12 CFR part 1204.

**RECORD ACCESS PROCEDURES:**

Direct requests for access, amendment, or correction to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**CONTESTING RECORD PROCEDURES:**

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**RECORD SOURCE CATEGORIES:**

The subject individuals and Bank, Office of Finance, and FHFA staff.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**FHFA–2**

**SYSTEM NAME:**

Financial Management System.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Federal Housing Finance Agency, 1700 G Street, NW., Washington DC 20552.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records cover prospective, present and former employees, contractors, and vendors of the Federal Housing Finance Agency (FHFA).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*Financial Management Records:* These records relate to government travel, vendor accounts, other employee reimbursements, interagency transactions, employee pay records, vendor registration data, purchase card accounts and transactions, and program payment agreements.

*Procurement Records:* These records relate to contractors/vendors if they are individuals, purchase card holders, including the name, social security number, and credit card number for employees who hold Government use cards, and procurement integrity certificates containing certifications by procurement officials that they are familiar with the Federal Procurement Policy Act.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal Home Loan Bank Act (12 U.S.C. 1421–1449) and Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008); Government Organizations and Employees (5 U.S.C. 5701–5709); Money and Finance (31 U.S.C. 3512); Federal Acquisition Regulation (48 CFR chapter 1).

**PURPOSE(S):**

FHFA collects and maintains these records to ensure the orderly processing of administrative actions within the agency.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

It shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. The Administrative Resource Center, Bureau of the Public Debt to complete administrative processing.

2. The United States Department of Justice (DOJ) or another Federal agency conducting litigation, or any court or adjudicative or administrative body, if:

a. FHFA, any employee of FHFA in his/her official capacity or in his/her individual capacity if DOJ has agreed to represent the employee, or the United States or any agency thereof, is a party to or has a significant interest in the litigation or proceeding; and

b. FHFA determines that use of the records is relevant and necessary to the litigation or proceeding.

3. The appropriate Federal, State, local or foreign agency or authority responsible for auditing, investigating, or prosecuting a violation or potential violation of a criminal or civil law, rule, or regulation or for enforcing or implementing a statute, rule, regulation, or order, if information in the system indicates such a violation.

4. Any source, including a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, but only to the extent necessary for the FHFA to obtain information relevant to a decision concerning the hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

5. Another Federal agency if the records are relevant and necessary to carry out that agency's authorized functions and to the decision on a matter, including, but not limited to the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency.

6. The Office of Management and Budget in connection with the review of private relief legislation.

7. An authorized appeal grievance examiner, a formal complaints examiner, an equal employment opportunity investigator, an arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

8. The Office of Personnel Management in connection with the evaluation and oversight of Federal personnel management concerning wages, benefits, retirement deductions, and other information necessary to carry out government-wide personnel functions, and to other Federal agencies to facilitate employee transfers.

9. Authorized employees of a Federal agency for purposes of an audit.

10. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

11. The DOJ to determine whether disclosure is required by the Freedom of Information Act (5 U.S.C. 552) (FOIA).

12. An individual or entity submitting a FOIA request if the information is subject to a FOIA exemption but the FHFA determines not to assert the exemption.

13. State and local taxing authorities if the Secretary of the Treasury has entered into an agreement, and the employee is subject to tax by that authority, whether or not tax is withheld.

14. Appropriate persons, consultants, contractors, entities or others when:

a. FHFA suspects or confirms that the security or confidentiality of information in a system of records has been compromised;

b. FHFA determines that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by FHFA or another agency or entity) that rely upon the compromised information; and

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

15. The National Archives and Records Administration and the General Services Administration for records management inspections, surveys, and studies and to determine whether the records have sufficient historical or other value to warrant accessioning into the National Archives of the United States.

16. FHFA personnel having a need for access to the records to perform their official functions.

17. A consultant, person, or entity that contracts or subcontracts with FHFA, to the extent necessary for the performance of the contract or subcontract and consistent with the purpose of the system, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

18. The U.S. Department of the Treasury, Federal debt collection centers, other appropriate Federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to FHFA or the Federal government. Disclosure will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status, and history of the debt.

19. The U.S. Department of the Treasury to effect issuance of wage payments through electronic funds transfer.

20. The Internal Revenue Service and Social Security Administration.

21. Federal, State and local agencies to assist in processing unemployment claims and enforcing child and spousal support obligations.

22. Federal, State and local government authorities, medical personnel, first responders and other emergency services personnel, and contractors, agency employees or others as necessary for continuity of operations planning, testing and execution, to ensure personnel accountability, or to respond to medical or other emergency situations.

23. Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

In accordance with the Privacy Act (5 U.S.C. 552a(b)(12)), disclosures may be made to "consumer reporting agencies" as defined in 31 U.S.C. 3701(a)(3) to aid in the collection of outstanding debts owed to the Federal Government. After following the prerequisites of 31 U.S.C. 3711, FHFA may disclose information necessary to establish the identity of the individual responsible for the claim, including name, address and taxpayer identification number, the amount, status and history of the claim, and the agency or program under which the claim arose.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored on paper, microform or in electronic media.

**RETRIEVABILITY:**

By name, social security number or other assigned identifier.

**SAFEGUARDS:**

Records are maintained in controlled access areas. Identification cards are verified to ensure that only authorized personnel are present. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols that

periodically are changed. Only employees whose official duties require access are allowed to view, administer and control these records.

**RETENTION AND DISPOSAL:**

Records are maintained in accordance with National Archives and Records Administration retention schedules. Paper and microform records ready for disposal are destroyed by shredding or maceration. Records in electronic media are electronically erased using accepted techniques.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of Budget and Financial Management, Federal Housing Finance Agency, 1700 G Street, NW., Washington DC 20552.

**NOTIFICATION PROCEDURES:**

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**RECORD ACCESS PROCEDURES:**

Direct requests to access, amend or correct a record to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**CONTESTING RECORD PROCEDURES:**

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**RECORD SOURCE CATEGORIES:**

Information is provided by the subject of the record, authorized representatives, supervisors, employers, other employees, other Federal, State or local agencies, and commercial entities.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**FHFA–3**

**SYSTEM NAME:**

Correspondence Tracking System

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Federal Housing Finance Agency, 1700 G Street NW., Washington DC 20552.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

An individual or entity who has submitted a request or inquiry concerning Federal Housing Finance Agency (FHFA) activities or practices.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Correspondence and records of communications between FHFA and individuals or entities submitting requests or inquiries, including copies of supporting documents and contact information supplied by the individuals or entities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal Home Loan Bank Act (12 U.S.C. 1421–1449) and Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654 (2008).

**PURPOSE(S):**

FHFA collects and maintains these records to facilitate the orderly processing of correspondence by the agency.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

It shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. The United States Department of Justice (DOJ) or another Federal agency conducting litigation, or any court or adjudicative or administrative body, if:

a. FHFA, any employee of FHFA in his/her official capacity or in his/her individual capacity if DOJ has agreed to represent the employee, or the United States or any agency thereof, is a party to or has a significant interest in the litigation or proceeding; and

b. FHFA determines that use of the records is relevant and necessary to the litigation or proceeding.

2. The appropriate Federal, State, local or foreign agency or authority responsible for auditing, investigating or prosecuting a violation or potential violation of a criminal or civil law, rule, or regulation or for enforcing or implementing a statute, rule, regulation, or order, if information in the system indicates such a violation.

3. Any source, including a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, but only to the extent necessary for the FHFA to obtain information relevant to a decision concerning the hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

4. Another Federal agency if the records are relevant and necessary to carry out that agency's authorized functions and to the decision on a matter, including, but not limited to the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or issuance of a license, grant or other benefit by the requesting agency.

5. The Office of Management and Budget in connection with the review of private relief legislation.

6. An authorized appeal grievance examiner, a formal complaints examiner, an equal employment opportunity investigator, or an arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

7. The Office of Personnel Management in connection with the evaluation and oversight of Federal personnel management concerning wages, benefits, retirement deductions and other information necessary to carry out government-wide personnel functions, and to other Federal agencies to facilitate employee transfers.

8. Authorized employees of a Federal agency for purposes of an audit.

9. A congressional office in response to an inquiry from the congressional office made at the request of the subject individual.

10. The DOJ to determine whether disclosure is required by the Freedom of Information Act (5 U.S.C. 552) (FOIA).

11. An individual or entity submitting a FOIA request if the information is subject to a FOIA exemption but the FHFA determines not to assert the exemption.

12. State and local taxing authorities if the Secretary of the Treasury has entered into an agreement, and the employee is subject to tax by that authority, whether or not tax is withheld.

13. Appropriate persons, consultants, contractors, entities or others when:

a. FHFA suspects or confirms that the security or confidentiality of information in a system of records has been compromised;

b. FHFA determines that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by FHFA or another agency or entity) that rely upon the compromised information; and

c. The disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize or remedy such harm.

14. The National Archives and Records Administration and the General Services Administration for records management inspections, surveys and studies and to determine whether the records have sufficient historical or other value to warrant accessioning into the National Archives of the United States.

15. FHFA personnel having a need for access to the records to perform their official functions.

16. A consultant, person, or entity that contracts or subcontracts with FHFA, to the extent necessary for the performance of the contract or subcontract and consistent with the purpose of the system, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

17. The U.S. Department of the Treasury, Federal debt collection centers, other appropriate Federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to FHFA or the Federal government. Disclosure will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status, and history of the debt.

18. The U.S. Department of the Treasury to effect issuance of wage payments through electronic funds transfer.

19. The Internal Revenue Service and Social Security Administration.

20. Federal, State and local agencies to assist in processing unemployment claims and enforcing child and spousal support obligations.

21. Federal, State and local government authorities, medical personnel, first responders and other emergency services personnel, and contractors, agency employees or others as necessary for continuity of operations planning, testing and execution, to ensure personnel accountability, or to respond to medical or other emergency situations.

22. Federal agencies as a data source for management information through the production of summary descriptive statistics and analytical studies in support of the functions for which the records are maintained or for related studies.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in this system are stored in electronic media and in hard copy.

**RETRIEVABILITY:**

Electronic media and paper format are indexed and retrieved by unique identification number that may be cross referenced to the individual's name.

**SAFEGUARDS:**

Records are maintained in controlled access areas. Electronic records are protected by restricted access procedures, including the use of passwords and sign-on protocols that periodically are changed. Only employees whose official duties require access are allowed to view, administer and control these records.

**RETENTION AND DISPOSAL:**

Records are maintained in accordance with National Archives and Records Administration retention schedules. Records are disposed of according to accepted techniques.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of the Director, Federal Housing Finance Agency, 1700 G Street, NW., Washington DC 20552.

**NOTIFICATION PROCEDURES:**

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**RECORD ACCESS PROCEDURES:**

Direct requests to access, amend or correct a record to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**CONTESTING RECORD PROCEDURES:**

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

**RECORDS SOURCE CATEGORIES:**

The information is obtained from the subject individual or entity, congressional offices that initiate a request or inquiry, and other parties providing information to FHFA in an attempt to resolve the request or inquiry.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9–15886 Filed 7–2–09; 8:45 am]
BILLING CODE 8070–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 2009.

**A. Federal Reserve Bank of New York** (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

*1. Haven Bancorp, MHC and Haven Bancorp, Inc.*, both of Hoboken, New Jersey; to become bank holding companies by acquiring 100 percent of

the voting shares of Haven Savings Bank, Hoboken, New Jersey.

Board of Governors of the Federal Reserve System, July 1, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–15932 Filed 7–2–09; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 2009.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. Eastern Virginia Bankshares, Inc.*, Tappahannock, Virginia; to acquire 100 percent of the voting shares of First Capital Bancorp, Inc., and thereby indirectly acquire voting shares of First Capital Bank, both of Glen Allen, Virginia.

**B. Federal Reserve Bank of Dallas** (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. A.N.B. Holding Company, Ltd.*, Terrell, Texas; to aquire additional voting shares, for a total of 35 percent, of The ANB Corporation, and thereby indirectly acquire additional voting shares of The American National Bank, both of Terrell, Texas; Lakeside Bancshares, Inc., and Lakeside National Bank, both of Rockwall, Texas.

Board of Governors of the Federal Reserve System, June 30, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–15776 Filed 7–2–09; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Judith M. Thomas, PhD, University of Alabama at Birmingham:* Based on a finding of scientific misconduct made by the University of Alabama at Birmingham (UAB) on January 24, 2008, a report of the UAB Investigation Committee, dated November 21, 2007, and additional analysis conducted by ORI during its oversight review, the U.S. Public Health Service (PHS) found that Dr. Judith M. Thomas, former Professor of Surgery, UAB, engaged in scientific misconduct in research supported by National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grants R01 AI22293, R01 AI39793, and U19 AI056542, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH, grant U19 DK57958, and NIH/Novartis Cooperative Research and Development Agreement 96–MH–01/NIHITC–0697.

The objective of the research was to test the effectiveness of different agents, such as Immunotoxin FN18–CRM9 or 15-deoxyspergualin (15-DSG), administered around the time of renal transplantation in non-human primates, in preventing rejection of the transplanted kidney. To determine whether or not the transplanted kidney was functioning (able to sustain life) after the immunomodulating therapy, the animals were to have both of their native kidneys removed at or shortly after the time of transplant, so that their survival would depend solely on the viability of the transplanted kidney. It was postulated that the use of immunomodulating agents would increase tolerance of the host animal to the grafted kidney and thus eliminate the necessity for chronic administration of immunosuppressive medications commonly required to prevent rejection in renal transplant recipients. Failure to remove both native kidneys would render it impossible to assess the effectiveness of the immunomodulating treatment, and could give totally misleading results, suggesting that the treatment worked while in fact survival was due entirely to the remaining native kidney.

PHS found that Respondent engaged in scientific misconduct by falsifying reports of research results in NIH-supported experiments with non-human primate (NHP) renal allograft recipients in 15 publications and in progress reports in two NIH research grant applications. Specifically, PHS found that:

1. Respondent falsely reported in 15 publications that NHP renal allograft recipients had received bilateral nephrectomies of their native kidneys, while in fact many of the animals retained an intrinsic kidney. Specifically:

A. Respondent falsely reported in eight publications [1] that at least 32 specific NHPs in a renal allotransplantation study had received bilateral nephrectomies, while in fact an intrinsic kidney was left in place in each animal, and generally, in seven additional publications,[2] Respondent falsely reported that all long term surviving NHP renal allograft recipients had received bilateral nephrectomies of their native kidneys. The publications referenced are listed separately in the endnotes.

2. In seven publications,[3] Respondent falsely reported immunomodulating treatments given to NHP renal allograft recipients by not reporting the administration of donor bone marrow to seven recipients and not reporting administration of cyclosporine A to four recipients. She also falsely reported (by overstating by 15%) dosages of the immunomodulating agents that were given and/or duration by overstating the exceptionalbriefer duration of immunomodulating treatment given to four recipients and cited in at least eight publications.[4]

3. In progress reports for NIH research awards R01 AI39793 and U19 DK57958, Respondent falsely claimed that long term surviving (LTS) NHP renal

allotransplantation recipients had received bilateral nephrectomies and falsely reported the immunomodulating therapies received by the graft recipients. Specifically:

A. In the progress report in application 5 R01 AI39793–04, submitted in approximately May 1999, Respondent repeated falsified claims of successful LTS NHP allografts by citing two publications (Transplantation 68:1660–1673, 1999 and Transplantation 68:215–219, 1999) that reported LTS in renal allograft recipients that were falsely reported to have had bilateral intrinsic nephrectomies, while laboratory records showed that at the most four of these animals had bilateral nephrectomies.

B. In the progress report in application 5 U19 DK57958–02 submitted in approximately May 2000, Respondent falsely reported that 10/13 LTS NHP renal allograft recipients had received bilateral nephrectomies of their native kidneys and falsified the immunomodulating treatment received by four of the animals by failing to report the administration of cyclosporine A (CSA) or donor bone marrow.

For the same award, in a progress report submitted in approximately May 2002, Respondent falsely reported that all of the 16 animals in the rhesus Ktx (kidney transplant) series had bilateral nephrectomies of their native kidneys, but in fact at least nine of the animals did not have the requisite bilateral nephrectomies.

In a competing renewal application 2 U19 DK057958–05, submitted on about 03/10/2003, Respondent reported that 14 Ktx long term survivors did not have an intrinsic kidney, while in fact at least 11 of those animals had a remaining intrinsic kidney.

Both Dr. Thomas and PHS are desirous of concluding this matter without further expense of time and other resources, and the parties have entered into a Voluntary Exclusion Agreement to settle the matter. Dr. Thomas accepted responsibility for the reporting described above, but denied that she intentionally committed research misconduct. The settlement is not an admission of liability on the part of the Respondent.

Dr. Thomas has entered into a Voluntary Exclusion Agreement in which she has voluntarily agreed, for a period of ten (10) years, beginning on May 5, 2009:

(1) To exclude herself voluntarily from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government referred to as "covered transactions" and defined by 2 CFR parts 180 and 376; and

(2) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

**John E. Dahlberg,**

*Director, Division of Investigative Oversight, Office of Research Integrity.*

**Endnotes**

1.


Asiedu, C.K., Dong, S.S., Lobashevsky, A., Jenkins, S.M., & Thomas, J.M. "Tolerance induced by anti-CD3 immunotoxin plus 15-deoxyspergualin associates with donor-specific indirect pathway unresponsiveness." Cell Immunol. 223(2):103–112, June 2003. (Retraction required by UAB.)

Hutchings, A., Wu, J., Asiedu, C., Hubbard, W., Eckhoff, D., Contreras, J., Thomas, F.T., Neville, D., & Thomas, J.M. "The immune decision toward allograft tolerance in non-human primates requires early inhibition of innate immunity and induction of immune regulation." Transpl Immunol. 11(3–4):335–344, July-September 2003. (Retraction required by UAB.)

Lobashevsky, A.L., Jiang, X.L., & Thomas, J.M. "Allele-specific in situ analysis of microchimerism by fluorescence resonance energy transfer (FRET) in nonhuman primate tissues." Hum Immunol. 63(2):108–120, February 2002. (Retraction required by UAB.)

Thomas, J.M., Eckhoff, D.E., Contreras, J.L., Lobashevsky, A.L., Hubbard, W.J., Moore, J.K., Cook, W.J., Thomas, F.T., & Neville, D.M. Jr. "Durable donor-specific T and B cell tolerance in rhesus macaques induced with peritransplantation anti-CD3 immunotoxin and deoxyspergualin: Absence of chronic allograft nephropathy." Transplantation 69(12):2497–2503, June 27, 2000. (Retracted.)

Thomas, J.M., Contreras, J.L., Jiang, X.L., Eckhoff, D.E., Wang, P.X., Hubbard, W.J., Lobashevsky, A.L., Wang, W., Asiedu, C., Stavrou, S., Cook, W.J., Robbin, M.L., Thomas, F.T., & Neville, D.M. Jr. "Peritransplant tolerance induction in macaques: Early events reflecting the unique synergy between immunotoxin and deoxyspergualin." Transplantation 68(11):1660–1673, December 15, 1999. (Retracted.)

Contreras, J.L., Eckhoff, D.E., Cartner, S., Frenette, L., Thomas, F.T., Robbin, M.L., Neville, D.M. Jr., & Thomas, J.M. "Tolerability and side effects of anti-CD3-immunotoxin in preclinical testing in kidney and pancreatic islet transplant recipients." Transplantation 68(2):215–219, July 27, 1999. (Retracted.)

Contreras, J.L., Wang, P.X., Eckhoff, D.E., Lobashevsky, A.L., Asiedu, C., Frenette, L., Robbin, M.L., Hubbard, W.J., Cartner, S., Nadler, S., Cook, W.J., Sharff, J., Shiloach, J., Thomas, F.T., Neville, D.M. Jr., & Thomas, J.M. "Peritransplant tolerance induction with anti-CD3-immunotoxin: A matter of proinflammatory cytokine control." Transplantation 65(9):1159–1169, May 15, 1998. (Retracted.)

Asiedu, C.K., Goodwin, K.J., Balgansuren, G., Jenkins, S.M., Le Bas-Bernardet, S., Jargal, U., Neville, D.M Jr., & Thomas, J.M. "Elevated T regulatory cells in long-term stable transplant tolerance in rhesus macaques induced by anti-CD3 immunotoxin and deoxyspergualin." J Immunol. 175(12):8060–8068, December 5, 2005. (Retracted.)


2.


Thomas, J.M., Hubbard, W.J., Sooudi, S.K., & Thomas, F.T. "STEALTH matters: A novel paradigm of durable primate allograft tolerance." Immunol Rev. 183:223–233, October 2001. Review. (Retracted.)

Thomas, F., Ray, P., & Thomas, J.M. "Immunological tolerance as an adjunct to allogeneic tissue grafting." Microsurgery 20(8):435–440, 2000. (Retraction required by UAB.)

Hutchings, A., & Thomas, J.M. "Transplantation: Tolerance." Current Opinion in Investigational Drugs 4(5):530–535, 2003. (Retraction required by UAB.)

Hubbard, W.J., Eckhoff, D., Contreras, J.L., Thomas, F.T., Hutchings, A., & Thomas, J.M. "STEALTH on the preclinical path to tolerance." Graft 5(6):322–330, 2002. (Retraction required by UAB—Journal has ceased publication.)

Hutchings, A., Hubbard, W.J., Thomas, F.T., & Thomas, J.M. "STEALTH in transplantation tolerance." Immunologic Res. 26:143–152, 2002. (Retracted.)

Thomas, J.M., Asiedu, C., George, J.F., Hubbard, W.J., & Thomas, F.T. "Preclinical bridge to clinical tolerance." Current Opinion in Organ Transplantation 6:95–101, 2001. (Retraction required by UAB.)

Hubbard, W.J., Contreras, J.V., Eckhoff, D.E., Thomas, F.T., Neville, D.M., & Thomas, J.M. "Immunotoxins and tolerance induction in primates." Current Opinion in Organ Transplantation 5:29–34, 2000. (Retracted.)


3.


Asiedu, C.K., Dong, S.S., Lobashevsky, A., Jenkins, S.M., & Thomas, J.M. "Tolerance induced by anti-CD3 immunotoxin plus 5-deoxyspergualin associates with donor-specific indirect pathway unresponsiveness." Cell Immunol. 223(2):103–112, June 2003. (Retraction required by UAB.)

Hutchings, A., Wu, J., Asiedu, C., Hubbard, W., Eckhoff, D., Contreras, J., Thomas, F.T., Neville, D., Thomas, J.M. "The immune decision toward allograft tolerance in non-human primates requires early inhibition of innate immunity and induction of immune regulation." Transpl Immunol. 11(3–4):335–344, July-September, 2003. (Retraction required by UAB.)

Thomas, J.M., Eckhoff, D.E., Contreras, J.L., Lobashevsky, A.L., Hubbard, W.J., Moore,

J.K., Cook, W.J., Thomas, F.T., & Neville, D.M. Jr. "Durable donor-specific T and B cell tolerance in rhesus macaques induced with peritransplantation anti-CD3 immunotoxin and deoxyspergualin: Absence of chronic allograft nephropathy." Transplantation 69(12):2497–2503, June 27, 2000. (Retracted.)

Thomas, J.M., Contreras, J.L., Jiang, X.L., Eckhoff, D.E., Wang, P.X., Hubbard, W.J., Lobashevsky, A.L., Wang, W., Asiedu, C., Stavrou, S., Cook, W.J., Robbin, M.L., Thomas, F.T., & Neville, D.M. Jr. "Peritransplant tolerance induction in macaques: Early events reflecting the unique synergy between immunotoxin and deoxyspergualin." Transplantation 68(11):1660–1673, December 15, 1999. (Retracted.)

Contreras, J.L., Eckhoff, D.E., Cartner, S., Frenette, L., Thomas, F.T., Robbin, M.L., Neville, D.M. Jr., & Thomas, J.M. "Tolerability and side effects of anti-CD3-immunotoxin in preclinical testing in kidney and pancreatic islet transplant recipients." Transplantation 68(2):215–219, July 27, 1999. (Retracted.)

Contreras, J.L., Wang, P.X., Eckhoff, D.E., Lobashevsky, A.L., Asiedu, C., Frenette, L., Robbin, M.L., Hubbard, W.J., Cartner, S., Nadler, S., Cook, W.J., Sharff, J., Shiloach, J., Thomas, F.T., Neville, D.M. Jr., & Thomas, J.M. "Peritransplant tolerance induction with anti-CD3-immunotoxin: A matter of proinflammatory cytokine control." Transplantation 65(9):1159–1169, May 15, 1998. (Retracted.)

Asiedu, C.K., Goodwin, K.J., Balgansuren, G., Jenkins, S.M., Le Bas-Bernardet, S., Jargal, U., Neville, D.M. Jr. & Thomas, J.M. "Elevated T regulatory cells in long-term stable transplant tolerance in rhesus macaques induced by anti-CD3 immunotoxin and deoxyspergualin." J Immunol. 175(12):8060–8068, December 5, 2005. (Retracted.)

4.

Includes those cited in Endnote 3 plus:

Thomas, J.M., Neville, D.M., Contreras, J.L., Eckhoff, D.E., Meng, G., Lobashevsky, A.L., Wang, P.X., Huang, Z.Q., Verbanac, K.M., Haisch, C.E., & Thomas, F.T. "Preclinical studies of allograft tolerance in rhesus monkeys: A novel anti-CD3-immunotoxin given peritransplant with donor marrow induces operational tolerance to kidney allografts." Transplantation 64(1):124–135, July 15, 1997.

[FR Doc. E9–15910 Filed 7–2–09; 8:45 am]

BILLING CODE 4150–31–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Secretary's Advisory Committee on Human Research Protections

**AGENCY:** Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold its twentieth meeting. The meeting will be open to the public.

**DATE:** The meeting will be held on Tuesday. July 21, 2009 from 8:30 a.m. until 5 p.m. and Wednesday, July 22, 2009 from 8:30 a.m. until 5 p.m.

**ADDRESSES:** The Sheraton National Hotel, 900 South Orme Street, Arlington, Virginia 22204. Phone: 703–521–1900.

**FOR FURTHER INFORMATION CONTACT:** Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections (OHRP), or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–8141; fax: 240–453–6909; e-mail address: *sachrp@osophs.dhhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On July 21, 2009, the Committee will discuss a summary of comments from the recent OHRP-issued advance notice of proposed rulemaking on institutional review board (IRB) accountability, as well as hear a summary of Clinical and Translational Science Awards pediatric research issues. SACHRP will also spend time focusing on long-range future planning regarding new subcommittees and areas of focus. The day will conclude with a panel discussion addressing the question of how to evaluate IRB effectiveness.

On July 22, 2009, the Committee will hear a report from the Subpart A Subcommittee focusing on issues surrounding consent for future use of specimens or data. This subcommittee was established by SACHRP at its October 4–5, 2006 meeting and is charged with developing recommendations for consideration by SACHRP about the application of Subpart A of 45 CFR part 46 in the current research environment. SACHRP will then hear a presentation of the recent National Academy of Sciences report entitled "Conflict of Interest in Medical Research, Education and Practice," followed by a panel discussion.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations. should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business Friday, July 17, 2009. Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://www.hhs.gov/ohrp/sachrp/index.html.*

Dated: June 29, 2009.

**Jerry Menikoff,**

*Director, Office for Human Research Protections Executive Secretary, Secretary's Advisory Committee on Human Research Protections.*

[FR Doc. E9–15783 Filed 7–2–09; 8:45 am]

BILLING CODE 4150–36–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the National Vaccine Advisory Committee

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

**ACTION:** Notice of meetings via conference call.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold two teleconference meetings. The meetings are open to the public. Pre-registration is required for both public attendance and comment. Individuals who wish to attend the meetings and/or participate in the public comment session should either e-mail *nvpo@hhs.gov* or call 202–690–5566 to register.

**DATES:** The meetings will be held on July 27, 2009, from 3 p.m. to 5 p.m. EDT and on August 24, 2009, from 3 p.m. to 5 p.m. EDT.

**ADDRESSES:** The meetings will occur by teleconference. To attend, please call 1–888–677–1385, passcode "NVAC."

**FOR FURTHER INFORMATION CONTACT:** Ms. Andrea Krull, Public Health Advisor,

National Vaccine Program Office, Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Phone: (202) 690–5566; Fax: (202) 260–1165; e-mail: *nvpo@hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. section 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

These are special meetings of the NVAC. Discussions will surround issues related to the Novel Influenza A (H1N1) outbreak. The Committee will discuss the activities and actions of the various HHS agencies and Federal advisory committees that address vaccine issues as it relates to the mission of NVAC. Representatives of State and local health associations will also provide their perspective.

For these special meetings, members of the public are invited to attend by teleconference via a toll-free call-in phone number. The call-in number will be operator assisted to provide members of the public the opportunity to provide comments to the Committee. Public participation and ability to comment will be limited to space and time available. Public comment will be limited to no more than three minutes per speaker. Pre-registration is required for both public attendance and comment. Individuals who plan to attend and need special assistance, such as accommodation for hearing impairment or other reasonable accommodations, should notify the designated contact person at least one week prior to the meeting.

Any members of the public who wish to have printed material distributed to NVAC should submit materials to the Executive Secretary, NVAC, through the contact person listed above prior to close of business one week before each meeting (conference call). A draft agenda and any additional materials will be posted on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/*) prior to the meeting.

Dated: June 29, 2009.

**Bruce Gellin,**

*Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.*

[FR Doc. E9–15782 Filed 7–2–09; 8:45 am]

BILLING CODE 4150–44–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Cross-community Evaluation of the Native Aspirations Project—NEW**

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) will conduct the Cross-Community Evaluation of the Native Aspirations Project. The cross-community evaluation has two tiers. Community-specific activities (Tier 1) are tied to key components of a community plan developed in each participating community that guides program planning and local evaluation through data-driven frameworks and inquiry. Tier I activities will include process and impact evaluation activities to determine the stage of readiness of communities to implement programs, how accurately community plans reflect the needs and characteristics of each community, how well local resources for American Indian/Alaska Native (AI/AN) youth are mobilized, the experience and impact of the Gathering of Native Americans (GONA), and the impact of the Native Aspirations program on the community. Core cross-community data collection activities (Tier II) are cross-community and include process and impact indicators such as community-level knowledge and awareness of suicide, violence, bullying, and substance abuse; pro-social and help-seeking behaviors among Native youth; and the provision of services specific to Native youth through existing service systems. Tier II activities are directly tied to the primary objectives of the Native Aspirations Project and are designed to augment data collection through the collection of community- and systems-level change measurement. Activities include the Service Provider Focus Groups and the Community Knowledge, Awareness and Behavior Survey (C–KABS).

Data will be collected from Native adults and youth involved in the Community Mobilization Plan (CMP) meeting and the Gathering of Native Americans (GONA), key program stakeholders, Native youth service providers (e.g., teachers, mental health providers, case workers, juvenile justice providers), and other community members (Native youth and adults). Data collection will take place in 25 AI/AN communities across three cohorts. Data collection for the Native Aspirations Cross-community Evaluation will occur over a 3-year period of grant funding for each cohort. Clearance is requested for a 3-year period of data collection that spans FY 2009 through FY 2012 during which Cohorts 3 and 4 will receive 3 years of data collection and Cohort 5 will receive 2 years of data collection with the final year to be submitted in an OMB renewal package. The following describes the specific data collection activities and the 9 data collection instruments to be used, followed by a summary table of respondents and respondent burden.

*Community Specific Data Collection Activities—Tier I*

- GONA—Baseline Interviews (1 Version). Each participating community will have the opportunity to hold a GONA focused on youth violence, bullying, substance abuse, and suicide concerns. Community GONAs follow four themes that correspond to indigenous values and are core resiliency factors for Native people. These values—belonging, mastery,

interdependence, and generosity—are the framework for this collaborative community event that focuses on individual and community healing, envisioning community wellness, mapping the assets of the community, and committing action in the community toward prevention efforts centered on youth violence, bullying, substance abuse, and suicide. Baseline GONA interviews will be conducted prior to the GONA in each community and will center on the four values and how respondents view and describe their relationships in and with the community; how people in the community deal with youth violence, bullying, substance abuse, and suicide; community members' willingness to work together to address these issues; community protective factors; and suggestions for how community members can work together to address these issues. The GONA baseline interviews will be conducted by telephone in year 1 of grant funding with a maximum of 6 adults per funded community who will attend the GONA in each Cohort. The total number of participants across Cohorts 3, 4 and 5 for 3 years is 150. Items are formatted as open-ended and semi-structured questions. The GONA baseline telephone interviews include 6 items and will take approximately 20 minutes to complete. By using either the GONA Evaluation—Baseline Consent Form, Phone Script or Verbal Consent Form, verbal consent will be received from each respondent prior to administration of the GONA Baseline Interviews.

• GONA—Followup Interviews (1 Version). The GONA followup interviews will be conducted several weeks after the GONA in each community. Followup interviews will center around the four values (belonging, master, interdependence, and generosity) and respondents' experience during the GONA; participation in activities; views on community relationships; knowledge of the Native Aspirations Project; knowledge of risk factors for youth violence, bullying, substance abuse, and suicide; community protective factors; willingness of community members to work together and suggestions for working together; and next steps. The GONA follow-up interviews will be conducted in person with a total of 9 adult respondents who attended the GONA in each funded community. Items are formatted as open-ended and semi-structured questions. The GONA followup interviews include 11 questions and will take approximately 60 minutes to complete. These followup interviews will occur during a site visit in year 1 of each grant for Cohorts 3, 4 and 5. The total number of participants across the three cohorts is 225. Each participant will provide written consent prior to the interview through the GONA Evaluation—Followup Interview Consent Form.

• GONA—Youth Followup Focus Group Moderator's Guide (1 Version). The GONA followup focus groups will be conducted several weeks after the GONA with youth who attended the GONA. The focus group moderator's guide follows the same content as the GONA Followup Interviews (see above). Cross-community evaluation staff will conduct up to 2 focus groups with youth in each funded community. Focus groups will consist of a maximum of 9 participants per group and will occur during a site visit in year 1 of each grant for Cohorts 3, 4 and 5. Focus group guides contain 11 items and will last 2 hours. A total of 450 respondents will participate in GONA focus groups. Caregivers will give consent for youth to participate using the GONA FollowUp Youth Focus Group Caregiver Consent form and youth will assent to participate using the GONA FollowUp Youth Focus Group Youth Assent form.

• Community Plan Focus Group Moderator's Guide (1 Version). Respondents participating in the Community Plan Focus Groups include youth and adults who attended the Community Mobilization Plan (CMP) meeting in year 1. The guide consists of questions designed to facilitate group communication around the community mobilization planning process, early implementation of the plan, and organizational and community awareness and involvement. Focus group guides contain 7 items and will last 2 hours. The cross-community evaluation team will conduct up to 3 focus groups with a maximum of 9 participants each in year 1 of the grant for each funded community in Cohorts 3, 4 and 5. The total number of participants across cohorts is 675. Consent to participate will be obtained from adult participants through the Community Plan Focus Group Consent form and youths' caregivers will use the Community Plan Focus Group Caregiver Consent form to give consent and youth will assent to participate using the Community Plan Focus Group Youth Assent (Attachment B.6).

• Community Plan In-depth Interviews (2 Versions). The Community Plan In-depth Interviews will be conducted in person during year 3 of the grant. The interviews will be conducted with the same individuals who participated in the CMP focus groups; however, the participants will be divided into two groups with two respective guides. Version 1 will be conducted with participants who remained active in the community mobilization process and Version 2 will be used with respondents who discontinued their involvement with Native Aspirations. The interviews will be used to gather information on the CMP implementation process, organizational and community awareness and involvement with Native Aspirations, and the impact of the Native Aspirations program on the community. The Community Plan In-depth Interview—Version 1 consists of 24 open ended and semi-structured questions and will take 60 minutes to complete. Version 1 will be conducted with up to 9 participants, including Native youth and adults, in year 3 of the grant for a maximum total of 225 respondents across Cohorts 3, 4 and 5. The Community Plan In-depth Interview—Version 2 consists of 11 open ended and semi-structured questions and will take 20 minutes to complete. Up to 9 respondents, including Native youth and adults, will be interviewed using Version 2 in year 3 of the grant. The maximum total of respondents from each funded community across Cohorts 3, 4 and 5 is 225 for Version 2 over the life of the grant. Adult participants for both versions will be required to provide written consent prior to participation using the Community Plan In-Depth Interview V.1 Consent form or the Community Plan In-Depth Interview V.2 Consent and youth participants will need written caregiver consent collected on the Community Plan Interview V.1 & V.2 Caregiver Consent forms and youth assent using the Community Plan Interview V.1 & V.2 Youth Assent forms.

*Cross Community Data Collection Activities—Tier II*

• Service Provider Focus Group Moderator's Guide (2 Versions). The Service Provider Focus Groups are designed to facilitate conversation and information sharing with youth service providers across communities to acquire a broader understanding of provider and service availability for Native youth. Version 1 participants will include agency staff such as teachers, mental health professionals, justice providers and welfare providers and Version 2 participants will include non-agency staff such as paraprofessional providers and/or "natural helpers." However, specific provider types will be identified for each participating community as a function of their existence and number. Version 1 of the

focus group guides consists of 9 items and Version 2 consists of 7 items, each with additional sub-questions/probes covering the availability of wellness and mental health services, how agencies work together, awareness of violence/suicide prevention activities, and areas for improvement. Focus groups will include a maximum of 9 participants per group, with up to 3 focus groups in each community in each of years 1 (baseline) and 3 (follow up) of the grant. Two focus groups will be conducted with agency staff using Version 1, for a maximum total of 900 respondents across the life of the grant. One focus group will be conducted with non-agency staff using Version 2 for a maximum number of 450 participants across the life of the grant for each Cohort. Focus groups will last approximately 2 hours. Written consent will be obtained prior to focus group participation using the Service Provider Focus Group V.1 Consent form and Service Provider Focus Group V.2 Consent form.

• Community Knowledge, Awareness and Behavior Survey (C–KABS)—Adult Version. The C–KABS—Adult Version is designed to gather knowledge and awareness information from adult community members related to suicide, substance abuse, violence, and bullying. In addition, respondents will report on their exposure to Native Aspirations Project activities regarding the prevention of suicide, substance abuse, violence, and bullying. Other constructs include the availability of services, knowledge of youth risk factors, and stigma around and attitude toward seeking services for wellness. The C–KABS—Adult Version will be administered annually, for all 3 years of the grant, to 100 Native adults from each funded community. The survey consists of 36 open and closed-ended questions that include Likert-type agreement scales, prevalence scales and questions, behavior scales and questions, true/false items, and demographic questions. The survey takes approximately 45 minutes to complete. A total of 7,500 respondents will participate from Cohorts 3, 4 and 5. Written consent will be obtained using the C–KABS Adult Consent form.

• Community Knowledge, Awareness, and Behavior Survey (C–KABS)—Youth Version. The C–KABS Youth Version will be administered to youth participants (age 11 and older) to gather information about existing social norms around help-seeking behavior, pro-social behavior (*e.g.,* traditional Indian activities) among youth, and the extent to which respondent youth have been exposed to risky behaviors (suicide, violence, substance abuse, and/or bullying), as well as their exposure to prevention efforts for risky behaviors related to the Native Aspirations Project. The survey will also contain items about youths' access to pathways to risky behaviors (*e.g.,* how hard/easy is it to get drugs/alcohol), access to and awareness of/willingness to seek help for these behaviors for themselves or others, and youths' engagement in risky and protective behaviors. The C–KABS Youth Version will be administered annually, for all 3 years of the grant, to 100 Native youth from each funded community. The survey consists of 38 open and closed-ended questions that include Likert-type agreement scales, prevalence scales and questions, behavior scales and questions, true/false items, and demographic questions. A total of 7,500 youth will participate from Cohorts 3, 4 and 5. Youths' caregivers will provide consent for youth to participate using the C–KABS Youth Caregiver Consent form and youth will assent to participate using the C–KABS Youth Assent form.

• Community Readiness Assessment (1 Version). The CRA addresses 6 dimensions focused an identified social concern (*i.e.,* youth violence, bullying, and suicide). These dimensions include (a) community prevention efforts, (b) community knowledge of prevention efforts, (c) leadership, (d) community climate, (e) knowledge about the problem, and (f) resources for prevention efforts. In addition, there are 9 developmental levels of readiness within a community that must progress through. CRAs include 26 interview questions which address each of the 6 community readiness dimensions; most items are formatted as open-ended questions with 3 items scored on a scale of 1 to 10. During years 1 and 3, CRAs will be conducted with each funded community in Cohorts 3, 4 and 5 to address youth violence, bullying, and suicide from a multi-faceted perspective. Telephone interviews will be conducted with up to six key informants in the community. Interviews will last 60 minutes and a maximum of 300 respondents will be interviewed. Overall readiness scores will be determined based on key informants' responses and will indicate the community's status with respect to each of these dimensions. Consent will be obtaining using either the Community Readiness Assessment Verbal Consent form or the Community Readiness Assessment Written Consent form.

Data Abstraction and Submission. In addition to the above described data collection activities, data from existing sources abstracted using the Data Abstraction and Submission Form (*i.e.,* management information systems (MIS), administrative records, case files, etc.) will be analyzed across communities to support the impact stage of Tier I of the cross-community evaluation. To minimize data collection burden on community members, this activity will be tailored to key components identified in the community plan and will be developed around existing data systems and related infrastructures. Cross-community technical assistance providers will assist in the identification of existing data sources and their relevance to locally planned Native Aspirations activities. Data elements may be requested from educational systems, juvenile justice/law enforcement sources, mental health agencies, child welfare, Medicaid, and community organizations (*e.g.,* YMCA, boys and girls clubs, etc.). A maximum of 10 data elements each will be requested from education and juvenile justice/law enforcement sources and a maximum of 5 data elements each will be requested from mental health, child welfare, Medicaid, and community activities. These data will be aggregated from existing data sources, some of which are attendance sheets, management information systems, etc. Grantees are responsible for aggregating these data and submitting them to the Native Aspirations Cross-community Evaluation team by mail, electronic mail, or by uploading the data. The burden associated with accessing, aggregating, and submitting existing data is approximately 6 hours per activity per year. Data abstraction and submission will occur two times per year in each funded community in Cohorts 3, 4 and 5. Seven respondents (one each representing education, juvenile justice, law enforcement, mental health, child welfare, Medicaid, and community activities) in each community will perform data abstraction and submission for a total of 175 respondents and 2,100 hours across 3 years of data collection for Cohorts 3, 4 and 5.

Given the expected variation in available technology (*e.g.,* Internet) and geographic spread of the target populations, flexible implementation options for surveys include local distribution and/or administration of surveys, in-person group, and Internet options and will be determined with each participating community and used when relevant and viable.

The average annual respondent burden is estimated below. The estimate reflects the average annual number of

respondents, the average annual number of responses, the time it will take for each response, and the average annual burden across 3 years of OMB clearance, which includes 3 years of data collection for Cohorts 3 and 4 and two years of data collection for Cohort 5.

ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES AND HOURS

| Measure name | Number of respondents | Number of responses per respondent | Hours/ response | Response burden* |
|---|---|---|---|---|
| Community Specific Data Collection Activities–Tier I: | | | | |
| GONA Baseline Interviews | 50 | 1 | 0.33 | 17 |
| GONA Follup Interviews | 75 | 1 | 1.0 | 75 |
| GONA Youth Followup Focus Groups | 150 | 1 | 2.0 | 300 |
| Community Plan Focus Groups | 225 | 1 | 2.0 | 450 |
| Community Plan In-depth Interviews—V.1 | 51 | 1 | 1.0 | 51 |
| Community Plan In-depth Interviews—V.2 | 51 | 1 | 0.33 | 17 |
| Service Provider Focus Groups—V.1 | 252 | 1 | 2.0 | 504 |
| Cross Community Data Collection Activities—Tier II: | | | | |
| Service Provider Focus Groups—V. 2 | 126 | 1 | 2.0 | 252 |
| C-KABS Adult Version | 2,234 | 1 | 0.75 | 1,676 |
| C-KABS Youth Version | 2,234 | 1 | 0.75 | 1,676 |
| Community Readiness Assessment1 | 84 | 1 | 1.0 | 84 |
| Data Abstraction and Submission Form | 156 | 2.0 | 6.0 | 1,872 |
| Total | 5,688 | | | 6,974 |

*Rounded to the nearest whole number.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: June 26, 2009.

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. E9–15915 Filed 7–2–09; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day-09–0556]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

Assisted Reproductive Technology (ART) Program Reporting System (0920–0559, exp. 9/30/2009)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The ART program reporting system is used to comply with section 2(a) of Public Law 102–493 (known as the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA)), 42 U.S.C. 263a–1(a)). FCSRCA requires each ART program to annually report to the Secretary through the CDC: the pregnancy success rates achieved by each ART program, the identity of each embryo laboratory used by the ART program, and whether the laboratory is certified or has applied for certification under the Act. The reporting system also makes it possible for the CDC to publish an annual success rate report to Congress as specified by the FCSRCA. This Revision request includes minor wording changes to improve the clarity of the question concerning pre-implantation genetic diagnosis (PGD), and an increase in the total estimated burden hours due to an increase in the estimated number of responses.

Information is collected electronically through the National ART Surveillance System (NASS), a Web-based interface, or by electronic submission of NASS-compatible files. The NASS includes information about all ART cycles initiated by any of the ART programs practicing in the United States and its territories. The system also collects information about the pregnancy outcome of each cycle as well as a number of data items deemed important to explain variability in success rates across ART programs and individuals.

Respondents are the 483 ART programs in the United States. Approximately 430 programs are expected to report an average of 321 ART cycles each. The burden estimate includes the time for collecting, validating, and reporting the requested information. Information is collected on an annual schedule.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 89,720.

**Estimated Annualized Burden Hours**

| Respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| ART Programs | NASS | 430 | 321 | 39/60 |

Dated: June 26, 2009.

**Maryam Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–15849 Filed 7–2–09; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day–09–0040]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

**Proposed Project**

NCEH/ATSDR Exposure Investigations (EI) [OMB NO: 0923–0040]—Revision—The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR).

*Background and Brief Description*

This is a brief summary of a joint clearance between the NCEH and ATSDR, (hereafter ATSDR will represent both ATSDR and NCEH). ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Reauthorization Act (SARA) to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances in the environment. EIs are an approach developed by ATSDR that employs targeted biologic (*e.g.*, urine, blood, hair samples) and environmental (*e.g.*, air, water, soil, or food) sampling to determine whether people are or have been exposed to unusual levels of pollutants at specific locations (*e.g.*, where people live, spend leisure time, or anywhere they might come into contact with contaminants under investigation). After a chemical release or suspected release into the environment, ATSDR's EIs are used by public health professionals, environmental risk managers, and other decision makers to determine if current conditions warrant intervention strategies to minimize or eliminate human exposure. EIs are usually requested by officials of a state health agency, county health departments, the Environmental Protection Agency, the general public, and ATSDR staff.

ATSDR has been conducting EIs since 1995 throughout the United States and seeks revision approved of the currently approval ICR. All of ATSDR's biomedical assessments and some of the environmental investigations involve participants. Participation is completely voluntary. To assist in interpreting the sampling results, a survey questionnaire appropriate to the specific contaminant is administered to participants. ATSDR collects contact information (*e.g.*, name, address, phone number) to provide the participant with their individual results. Name and address information are broken into nine separate questions (data fields) for computer entry. General information, which includes height, weight, age, race, gender, etc., is also collected primarily on biomedical investigations to assist with results interpretation. General information can account for approximately 28 questions per investigation, out of a set of 57 general information questions. Some of this information is investigation-specific; not all of this data is collected for every investigation.

ATSDR also collects information on other possible confounding sources of chemical(s) exposure such as medicines taken, foods eaten, hobbies, jobs, etc. In addition, ATSDR asks questions on recreational or occupational activities that could increase a participant's exposure potential. That information represents an individual's exposure history. To cover those broad categories, ATSDR is seeking approval for the use of sets of topical questions. Of these, we use approximately 12–15 questions about the pertinent environmental exposures per investigation. This number can vary depending on the number of chemicals being investigated, the route of exposure (*e.g.*, breathing, eating, touching), and number of other sources of the chemical(s) (*e.g.*, products used, jobs).

Data management procedures have not changed since the previous approved information collection and the instrument does not have extensive revisions. Only minor non-substantive changes were made to the Library of Chemical Exposure Questions by dividing one question into two; to clarify, specify and better generate the information needed.

Typically, the number of participants in an individual EI ranges from 10 to less than 50. Questionnaires are generally needed in less than half of the EIs (approximately 10–15 per year).

The subject matter for the complete set of topical questions includes the following:

(1) Media specific which includes: air (indoor/outdoor); water (water source and plumbing); soil, and food (gardening, fish, game, domestic animals (*e.g.*, chickens).

(2) Other sources such as: occupations; hobbies; household chemical uses and house construction characteristics; lifestyle (*e.g.*, smoking); medicines and/or health conditions, and foods.

There are no costs to respondents other than their time. The total estimated annual burden hours are 375.

*Estimated Annualized Burden Hours*

| Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Exposure Investigation Participants | 750 | 1 | 30/60 | 375 |

Dated: June 26, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–15850 Filed 7–2–09; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: 2010 National Mental Health Services Survey (N–MHSS) (OMB No. 0930–0119)—Revision**

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will conduct the 2010 N–MHSS. This national survey will update the previous biennial mental health facility survey conducted in 2008—the National Survey of Mental Health Treatment Facilities (NSMHTF) under OMB No. 0930–0119. Similar in design to the 2008 NSMHTF, the 2010 N–MHSS will survey all mental health service locations, instead of surveying each mental health organization as a whole. These separate mental health service locations (facilities) are in contrast to mental health organizations which may include multiple facilities (service locations). This survey will be (a) A 100-percent enumeration of all known facilities nationwide that specialize in mental health treatment services, (b) more consumer-oriented in describing services available at each facility location, and (c) patterned after SAMHSA's Office of Applied Studies National Survey of Substance Abuse Treatment Services (OMB No. 0930–0106).

The 2010 N–MHSS will utilize one questionnaire for all mental health facility types including hospitals, residential treatment centers, outpatient clinics, and multi-setting facilities. The information collected will include: intake telephone numbers for services, types of services offered, sources of payment for services, facility caseload characteristics, and facility bed counts, if applicable. This survey will use a multi-mode approach to data collection—mail and Web with telephone follow-up.

The resulting database will be used to provide both State and national estimates of facility types and their patient caseloads. Information from the 2010 survey will also be used to update SAMHSA's online Mental Health Facility Locator for use by consumers. In addition, data derived from the survey will be published by CMHS in SAMHSA publications such as *Mental Health, United States* and in professional journals such as *Psychiatric Services* and the *American Journal of Psychiatry*. The publication, *Mental Health, United States*, is used by the general public, State governments, the U.S. Congress, university researchers, mental health service providers, and mental health care professionals. The following Table summarizes the estimated response burden for the survey.

ESTIMATED TOTAL RESPONSE BURDEN FOR THE 2010 N–MHSS

| Facility type | Number of respondents | Responses per respondent | Average hours per response | Total hour burden |
|---|---|---|---|---|
| Public Psychiatric Hospitals | 304 | 1 | 1 | 304 |
| Private Psychiatric Hospitals | 534 | 1 | 1 | 534 |
| General Hospitals | 1,712 | 1 | 1 | 1,712 |
| Residential Treatment Centers for Children | 1,186 | 1 | 1 | 1,186 |
| Residential Treatment Centers for Adults | 829 | 1 | 1 | 829 |
| Outpatient Clinics | 6,266 | 1 | 1 | 6,266 |
| Multi-Setting Facilities | 2,115 | 1 | 1 | 2,115 |
| Total Facilities | 12,946 | 1 | 1 | 12,946 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: June 29, 2009.

**Elaine Parry,**

*Director, Office of Program Services.*

[FR Doc. E9–15914 Filed 7–2–09; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice Correction; Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information from NCI Cancer Information Service (CIS) Clients (NCI)

The **Federal Register** notices published on May 1, 2009 (74 FR 20320) and July 1, 2009 (74 FR 31445) announcing the submission to OMB of the project titled, "Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information from NCI Cancer Information Service (CIS) Clients (NCI)" was submitted with errors. The "*Type of Information Collection Request*" was incorrectly listed as a revision. This submission should be considered an extension. Additionally, the total annual burden hours was reported as 2,524 hours.

Instead, the estimated total annual burden is 2,492 hours.

Dated: July 1, 2009.

**Vivian Horovitch-Kelley,**

*NCI Project Clearance Liaison, National Institutes of Health.*

[FR Doc. E9–15955 Filed 7–2–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1412–N]**

## Medicare Program; Second Semi-Annual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—August 5–7, 2009

**AGENCY:** Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the second semi-annual meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2009. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. We will consider the Panel's advice as we address comments and complete the final rule that updates the hospital Outpatient Prospective Payment System (OPPS) for CY 2010.

**DATES:** *Meeting Dates:* We are scheduling the second semi-annual meeting in 2009 for the following dates and times:

- Wednesday, August 5, 2009, 1 p.m. to 5 p.m. (e.s.t.) [1]
- Thursday, August 6, 2009, 8 a.m. to 5 p.m. (e.s.t.) [1]
- Friday, August 7, 2009, 8 a.m. to 12 noon (e.s.t.) [2]

*Deadlines:*

*Deadline for Hardcopy Comments/ Suggested Agenda Topics*—5 p.m. (e.s.t.), Wednesday, July 22, 2009.

*Deadline for Hardcopy Presentations*—5 p.m. (e.s.t.), Wednesday, July 22, 2009.

*Deadline for Attendance Registration*—5 p.m. (e.s.t.), Wednesday, July 29, 2009.

*Deadline for Special Accommodations*—5 p.m. (e.s.t.), Wednesday, July 29, 2009.

*Submission of Materials to the Designated Federal Officer (DFO):*

Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, nor can we print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations can be reproduced for public dissemination. All hardcopy presentations *must be accompanied by Form CMS–20017 (revised 01/07).* The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*

Presenters must use the most recent copy of CMS–20017 (updated 01/07) at the above URL. Additionally, presenters must *clearly* explain the action(s) that they are requesting CMS to take in the appropriate section of the form. They must also clarify their relationship to the organization that they represent in the presentation.

**Note:** Issues that are vague, or that are outside the scope of the APC Panel's purpose, will not be considered for presentations and comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

We are also requiring electronic versions of the written comments and presentations, in addition to the hardcopies.

In summary, presenters and/or commenters must do the following:

- Send both electronic and hardcopy versions of their presentations and written comments by the prescribed deadlines.
- Send electronic transmissions—preferably in PowerPoint presentation format—to the e-mail address below.
- Do not send pictures of patients in any of the documents unless their faces have been blocked out.
- Do not send documents electronically that have been archived.
- Mail (or send by courier) to the DFO all hardcopies, accompanied by Form CMS–20017 (revised 01/07), if they are presenting, as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.
- Commenters are *not* required to send Form CMS–20017 with their written comments.

**ADDRESSES:** The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact: Shirl Ackerman-Ross, DFO, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850. *Phone:* (410) 786–4474.

**Note:** We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, please call (410) 786–4532 or (410) 786–9316.

E-mail addresses for comments, presentations, and registration requests are *CMS APCPanel@cms.hhs.gov,* or *SAckermanross@cms.hhs.gov.*

**Note:** There is NO underscore in the APC Panel e-mail address; there is a SPACE between CMS and APCPanel.

News media representatives must contact our Public Affairs Office at (202) 690–6145.

*Advisory Committees' Information Lines:* The phone numbers for the CMS Federal Advisory Committee Hotline are 1–877–449–5659 (toll free) and (410) 786–9379 (local).

*Web Sites:* The following information is available on the CMS Web site at *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage* in order to obtain the following information:

**Note:** There is an UNDERSCORE after FACA/05(like this_); there is no space.

- Additional information on the APC meeting agenda topics,
- Updates to the Panel's activities,
- Copies of the current Charter, and
- Membership requirements.

You may also search information about the APC Panel and its membership in the FACA database at the following URL: *https://www.fido.gov/facadatabase/public.asp.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert, outside advisory panel on the clinical integrity of the Ambulatory Payment Classification (APC) groups and weights established under the Medicare hospital Outpatient Prospective Payment System (OPPS).

The APC Panel meets up to three times annually. The Charter requires

[1] The times listed in this notice are approximate times; consequently, the meetings may last longer than listed in this notice—but will not begin before the posted times.

[2] If the business of the Panel concludes on Thursday, August 6, 2009, there will be no Friday (August 7, 2009) meeting.

that the Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel consists of up to 15 members who are representatives of providers and a Chair.

Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. The Secretary or Administrator selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations.

All members must have technical expertise to enable them to participate fully in the Panel's work. The expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise. Details regarding membership requirements for the APC Panel are found on the CMS and FACA Web sites as listed above.

The Panel presently consists of the following members:

- E. L. Hambrick, M.D., J.D., Chair, a CMS Medical Officer.
- Gloryanne Bryant, B.S., RHIA, RHIT, CCS.
- Patrick A. Grusenmeyer, Sc.D., FACHE.
- Kathleen Graham, R.N., MSHA, CPHQ, ACM.
- Judith T. Kelly, B.S.H.A., RHIT, RHIA, CCS.
- Michael D. Mills, Ph.D.
- Thomas M. Munger, M.D., FACC.
- Agatha L. Nolen, D.Ph., M.S.
- Randall A. Oyer, M.D.
- Beverly Khnie Philip, M.D.
- Russ Ranallo, M.S., B.S.
- James V. Rawson, M.D.
- Michael A. Ross, M.D., FACEP.
- Patricia Spencer-Cisek, M.S., APRN–BC, AOCN®.
- Kim Allen Williams, M.D., FACC, FABC.
- Robert M. Zwolak, M.D., Ph.D., FACS.

## II. Agenda

The agenda for the August 2009 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.

**Note:** The subject matter before the Panel will be limited to these and related topics. Issues related to calculation of the OPPS conversion factor, charge compression, pass-through payments, or wage adjustments are not within the scope of the Panel's purpose. Therefore, these issues will not be considered for presentations and/or comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

The Panel may use data collected or developed by entities and organizations, other than DHHS and CMS, in conducting its review. We recommend that organizations submit data for the Panel's and CMS staff's review.

## III. Written Comments and Suggested Agenda Topics

Send hardcopy and electronic written comments and suggested agenda topics to the DFO at the address indicated above. The DFO must receive these items by 5 p.m. (e.s.t.), Wednesday, July 22, 2009. There will be no exceptions. We appreciate your cooperation on this matter.

The written comments and suggested agenda topics submitted for the August 2009 APC Panel meeting must fall within the subject categories outlined in the Panel's Charter and as listed in the Agenda section of this notice.

## IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must submit hardcopy and electronic versions of their presentations to the DFO by 5 p.m. (e.s.t.), Wednesday, July 22, 2009, for consideration.

Concise PowerPoint presentations, not lengthy written statements, are easier for the Panel and audience to follow.

The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes in length for an individual or an organization.

The Chair may further limit time allowed for presentations due to the number of oral presentations, if necessary.

## V. Presenter and Presentation Information

All presenters must submit Form CMS–20017 (revised 01/07). Hardcopies are required for oral presentations; however, electronic submissions of Form CMS–20017 are optional. The DFO must receive the following information from those wishing to make oral presentations:

- Form CMS–20017 completed with all pertinent information identified on the first page of the presentation,
- One hardcopy of presentation,
- Electronic copy of presentation, and
- Personal registration information as described in the Meeting Attendance section below.

(Those persons wishing to submit comments only must send hardcopy and electronic versions of their comments, but they are *not* required to submit Form CMS–20017.)

## VI. Oral Comments

In addition to formal oral presentations, there will be opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

## VII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must e-mail the DFO to register in advance no later than 5 p.m. (e.s.t.), Wednesday, July 29, 2009. A confirmation will be sent to the requester(s) via return e-mail.

The following personal information must be e-mailed to the DFO by the date and time above:

- Name(s) of attendee(s),
- Title(s),
- Organization,
- E-mail addresses of all attendees, and
- Telephone number(s).

## VIII. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting including presenters must be registered and on the attendance list by the prescribed date.
- Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.
- Attendees must present U.S. Federal Government or State

photographic identification (preferably a valid driver's license or passport) to the Federal Protective Service or Guard Service personnel before entering the building.

- CMS is a tobacco-free campus; violators are subject to legal action.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- In addition, all persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, for example laptops, cell phones, and palm pilots, are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.
- At CMS, security is a primary concern and is taken very seriously. These security issues are for your and our protection.

**IX. Special Accommodations**

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.s.t.), Wednesday, July 29, 2009.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: June 11, 2009.

**Charlene Frizzera,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E9–15880 Filed 7–2–09; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; Hormonal signals that regulate ovarian differentiation.

*Date:* July 30, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Dennis E. Leszczynski, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5b01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–15789 Filed 7–2–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel. Ancillary Studies in Clinical Trials.

*Date:* July 22, 2009.

*Time:* 8 a.m. to 1:30 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:* Chang Sook Kim, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892. 301–435–0287. *carolko@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel. Short-Term Research Training (T35's).

*Date:* July 23, 2009.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Chang Sook Kim, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892. 301–435–0287. *carolko@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel. Institutional National Research Service Award (T32).

*Date:* July 27, 2009.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Roy L White, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7176, Bethesda, MD 20892–7924. 301–435–0310. *whiterl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–15793 Filed 7–2–09; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 of Child Health and Human Development Special Emphasis Panel; Community Assessment Rehabilitation Experiment (CARE).

*Date:* July 28, 2009.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 29, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–15788 Filed 7–2–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers For Medicare & Medicaid Services

**[CMS Computer Match No. 2009–05; HHS Computer Match No. 0603]**

### Privacy Act of 1974

**AGENCY:** Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

**ACTION:** Notice of Computer Matching Program (CMP).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with various Participating States. We have provided information about the matching program in the "Supplementary Information" section below. The Privacy Act provides an opportunity for interested persons to comment on the matching program. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation. *See* "Effective Dates" section below for comment period.

**DATES:** *Effective Dates:* CMS filed a report of the CMP with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on < *DATE* >. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication in the **Federal Register**, whichever is later. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

**ADDRESSES:** The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

**FOR FURTHER INFORMATION CONTACT:** Lourdes Grindal Miller, Health Insurance Specialist, Program Integrity Group, Office of Financial Management, CMS, Mail-stop C3–02–16, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–1022 and e-mail is *Lourdes.grindalmiller@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Description of the Matching Program

*A. General*

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to: Negotiate written agreements with the other agencies participating in the matching programs;

Obtain the Data Integrity Board approval of the match agreements; Furnish detailed reports about matching programs to Congress and OMB; Notify applicants and beneficiaries that the records are subject to matching; and, Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

*B. CMS Computer Matches Subject to the Privacy Act*

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: June 22, 2009.

**Michelle Snyder,**

*Deputy Chief Operating Officer, Centers for Medicare & Medicaid Services.*

#### CMS Computer Match No. 2009–05; HHS Computer Match No. 0603

**NAME:**

"Computer Matching Agreement (CMA) Between the Centers for Medicare & Medicaid Services (CMS) and Participating States for the Disclosure of Medicare and Medicaid Information."

**SECURITY CLASSIFICATION:**

Level Three Privacy Act Sensitive

**PARTICIPATING AGENCIES:**

The Centers for Medicare & Medicaid Services (CMS) All Participating States,

the District of Columbia, and the territories of Guam, Puerto Rico, American Samoa, and the Virgin Islands.

**AUTHORITY FOR CONDUCTING MATCHING PROGRAM:**

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) § 552a), as amended, (as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 65 **Federal Register** (FR) 77677 (December 12, 2000), 61 FR 6435 (February 20, 1996), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (HHS) (the Secretary). Sections 1816 and 1842 of the Social Security Act (the Act) permits the Secretary to make audits of the records of providers as necessary to insure that proper payments are made, to assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits, and to perform other functions as are necessary (Pub. L. 108–173 § 911, amending Title XVIII, § 1874A (42 U.S.C. 1395kk–1).

Section 1857 of the Act provides that the Secretary, or any person or organization designated by the Secretary shall have the right to "inspect or otherwise evaluate (i) the quality, appropriateness, and timeliness of services performed under the contract" (42 U.S.C. 1395w–27(d) (2) (A)); and "audit and inspect any books and records of [a Medicare Advantage] organization that pertain to services performed or determinations of amounts payable under the contract." (42 U.S.C. 1395w–27(d) (2) (B)).

Furthermore, § 1874(b) of the Act authorizes the Secretary to "contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under Subchapter XVIII." (42 U.S.C. 1395kk (b).)

Section 1893 of the Act establishes the Medicare Integrity Program, under which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass existing capabilities (42 U.S.C. 1395ddd)). These entities are called Program Safeguards Contractors (PSC) and Medicare Drug Integrity Contractors (MEDIC).

Pursuant to the applicable state statutes and guidelines for the Participating State charged with the administration of the Medicaid program, disclosure of the Medicaid data pursuant to this Agreement is for purposes directly connected with the administration of the Medicaid program, in compliance with 42 CFR 431.300 through 431.307. Those purposes include the detection, prosecution, and deterrence of FW&A in the Medicaid program. (*See* state signature page for the legal authority for each specific state.)

CMS would cite to 45 CFR 164.501 (definition of "Health Oversight Agency") and 45 CFR 164.512(d) as bases under which it believes Participating States may make the contemplated disclosures of Medicaid data to CMS' contractor. It would also note that under sec. 6034(g)(1)(B) of the Deficit Reduction Act (Pub. L. 109–171; 42 U.S.C. 1395ddd(g)(1)(B)), CMS is required to disclose certain data and statistical information collected by the Medi-Medi program to States and other named parties. This data can then be used by each receiving state's own FW&A programs.

**PURPOSE(S) OF THE MATCHING PROGRAM:**

The purpose of this Agreement is to establish the conditions, safeguards, and procedures under which the Centers for Medicare & Medicaid Services (CMS) will conduct a computer matching program with Participating States to study claims, billing, and eligibility information to detect suspected instances of fraud, waste and abuse (FW&A). To support the health oversight activities of CMS, CMS and the Participating State will provide a CMS contractor (hereinafter referred to as the "Custodian") with Medicare and Medicaid records pertaining to eligibility, claims, and billing information, which the Custodian will match. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices and abnormal patterns requiring further investigation. Aberrant practices and abnormal patterns identified in this matching program that constitute FW&A will involve individuals who are practitioners, providers and suppliers of services, Medicare beneficiaries, Medicaid recipients, and other individuals whose information may be maintained in the records. Furthermore, § 6034(g)(1)(B) of the Deficit Reduction Act (DRA), Public Law 109–171; 42 U.S.C. 1395ddd(g)(1)(B) provides for the disclosure of certain information that will be derived from these CMS health oversight activities to "States (including a Medicaid fraud and abuse control unit described in § 1903(q)" of the Social Security Act (SSA). Participating states will therefore receive information from CMS for use in their own FW&A programs.

**CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:**

This computer matching program (CMP) will enhance the ability of CMS and Participating States to detect FW&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the Participating State against records of Medicaid recipients, practitioners, providers, and suppliers in the Participating State.

**DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:**

One Program Integrity Data Repository (ODR), System No. 09–70–0568 was published at 71 FR 64530 (November 2, 2006).

Medicare Integrated Data Repository (IDR), System No. 09–70–0571 was published at 71 FR 74915 (December 13, 2006).

The records files that will be made available for this matching program by the Participating State include utilization, entitlement, and provider records.

**INCLUSIVE DATES OF THE MATCH:**

The CMP shall become effective 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E9–15803 Filed 7–2–09; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Intent To Request Reinstatement From OMB of One Current Public Collection of Information: Information Regarding Security Programs for Foreign Air Carriers

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 30-Day Reinstatement Notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on March 26, 2009 at 74 FR 13320. The collection involves the submission of information collected to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures.

**DATES:** Send your comments by August 5, 2009. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**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 Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Ginger LeMay, Office of Information Technology, TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3616; e-mail *ginger.lemay@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Information Collection Requirement

*Title:* Public Collection of Information Regarding Security Programs for Foreign Air Carriers.

*Type of Request:* Reinstatement.

*OMB Control Number:* 1652–0005.

*Form(s):* Supplemental Information Form.

*Affected Public:* Foreign Air Carriers.

*Abstract:* Based on 49 CFR part 1546, Security Programs for Foreign Air Carriers, TSA requires foreign air carriers to submit the following information: (1) A master crew list of all flight deck and cabin crew members flying to and from the United States; (2) the flight crew list on a flight-by-flight basis; (3) passenger information on a flight-by-flight basis; and (4) total amount of cargo screened onboard flights departing airports within the United States, consisting of cargo screened at 100 percent and cargo screened at 50 percent. Foreign air carriers are required to provide this information via electronic means. Foreign air carriers with limited electronic systems may need to modify their current systems or generate a new computer system in order to submit the requested information. This information collection is mandatory for foreign air carriers and must be submitted in order to comply with their TSA-accepted security programs. Additionally, foreign air carriers must maintain these records as well as training records for crew members and individuals performing security-related functions, and make them available to TSA for inspection upon request.

Foreign air carriers must conduct a comparison of their passenger names and flight deck and cabin crewmember names against the TSA-issued watch lists and report passengers who have been confirmed as a match. TSA will continue to collect information to determine foreign air carrier compliance with the requirements of 49 CFR part 1546.

TSA estimates that there will be approximately 162 respondents to the information collection, with an annual burden estimate of 747,387 hours.

Issued in Arlington, Virginia, on June 30, 2009.

**Ginger LeMay,**

*Paperwork Reduction Act Officer, Business Improvements and Communications, Office of Information Technology.*

[FR Doc. E9–15920 Filed 7–2–09; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1847–DR; Docket ID FEMA–2008–0018]**

### Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1847–DR), dated June 19, 2009, and related determinations.

**DATES:** *Effective Date:* June 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 19, 2009.

Grundy and Livingston Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals

and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–15887 Filed 7–2–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5281–N–53]**

### Opinion by Counsel to the Mortgagor (FHA)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The opinion is required to provide assurance to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions.

**DATES:** *Comments Due Date: August 5, 2009.*

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2510–0010) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Opinion by Counsel to the Mortgagor (FHA).

*OMB Approval Number:* 2510–0010.

*Form Numbers:* HUD–91725, HUD–91725–INST, HUD–91725–CERT .

*Description of the need for the information and its proposed use:*

The opinion is required to provide assurance to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | x | Hours per reponse | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden | 800 | 1 | | 1 | | 800 |

*Total Estimated Burden Hours:* 800.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 2009.

**Stephen A. Hill,**

*Acting Director, Policy and E–GOV Officer, Office of the Chief Information Officer.*

[FR Doc. E9–15879 Filed 7–2–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-FWS-R7-MB-2009-N134] [70151-1231-BS51-L6]**

### Proposed Information Collection; OMB Control Number 1018-0124; Alaska Migratory Bird Subsistence Harvest Household Survey

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (Fish and Wildlife Service, Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on January 31, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Your comments must be received by September 4, 2009.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (e-mail).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703-712) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for managing migratory bird populations that frequent the United States and for setting harvest regulations that allow for the conservation of those populations. These responsibilities include gathering accurate geographical and temporal data on various characteristics of migratory bird harvest. We use harvest data to issue harvest regulations, and we adjust the regulations as needed to provide maximum subsistence harvest opportunity while keeping migratory bird populations at desired and sustainable levels.

The Migratory Bird Treaty Act Protocol Amendment (1995) (Amendment) provides for the customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska. The Amendment states that its intent is not to cause significant increases in the take of species of migratory birds relative to their continental population sizes. A submittal letter from the Department of State to the White House (May 20, 1996) accompanied the Amendment and specified the need for harvest monitoring. The submittal letter stated that the Service, the Alaska Department of Fish and Game (ADFG), and Alaska Native organizations would collect harvest information cooperatively within the subsistence eligible areas. Harvest survey data help to ensure that customary and traditional subsistence uses of migratory birds and their eggs by indigenous inhabitants of Alaska do not significantly increase the take of species of migratory birds relative to their continental population sizes.

Between 1989 and 2004, we monitored subsistence harvest of migratory birds using annual household surveys in the Yukon-Kuskokwim Delta, which is the region of highest subsistence bird harvest in the State of Alaska. In 2004, we began monitoring subsistence harvest of migratory birds in subsistence eligible areas Statewide. The Statewide harvest assessment program allows tracking significant trends and changes in levels of harvest and user participation. The harvest assessment program relies on collaboration among the Service, the ADFG, and a number of Alaska Native organizations.

We gather information on the annual subsistence harvest of 54 bird species (ducks, geese, swans, cranes, upland game birds, seabirds, shorebirds, and grebes and loons) in the subsistence eligible areas of Alaska. The survey covers 10 regions of Alaska, which are further divided in 29 subregions. We survey the regions and villages in a rotation schedule to accommodate budget constraints and to minimize respondent burden. The survey covers spring, summer, and fall harvest in most regions.

In collaboration with Alaska Native organizations, we hire local resident surveyors to collect the harvest information. The surveyors list all households in the villages to be surveyed and provide survey information and harvest report forms to randomly selected households that have agreed to participate in the survey. To ensure confidentiality of harvest information, we identify households by a numeric code. The surveyor visits households three times during the survey year. At the first household visit, the surveyor explains the survey purposes and invites household participation. The surveyor returns at the end of harvest seasons to help the household complete the harvest report form.

We have revised the survey methods to streamline procedures and reduce respondent burden. We plan to use two forms for household participation:

(1) FWS Form 3-2380 (Tracking Sheet and Household Consent). The surveyor visits each household selected to participate in the survey to provide information on the objectives and to obtain household consent to participate. The surveyor uses this form to record consent and track subsequent visits for completion of harvest reports

(2) FWS Form 3-2381 (Harvest Report). This form has drawings of bird species most commonly available for harvest in the different regions of Alaska with fields for writing down the numbers of birds and eggs taken. There are four versions of this form: Interior Alaska, North Slope, Southern Coastal Alaska, and West/South-Central Alaska. This form has a page for each season surveyed, and, on each page, there are fields for the household code, community name, harvest year, date of completion, and comments.

## II. Data

*OMB Control Number:* 1018-0124.

*Title:* Alaska Migratory Bird Subsistence Harvest Household Survey.

*Service Form Number(s):* 3-2380 and 3-2381.

*Type of Request:* Revision of a currently approved collection.

*Affected Public:* Households within subsistence eligible areas of Alaska (Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* Annually for Tracking Sheet and Household Consent; three times annually for Harvest Report.

| Activity | Number of annual respondents | Number of annual responses | Completion time per response | Annual burden hours |
|---|---|---|---|---|
| 3-2380—Tracking Sheet and Household Consent | 2,875 | 2,875 | 5 minutes | 240 |
| 3-2381—Harvest Report (three seasonal sheets) | 2,300 | 6,900 | 5 minutes | 575 |
| Totals | 5,175 | 9,775 | | 815 |

## III. Request for Comments

We invite comments concerning this IC on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(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.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 26, 2009

**Hope Grey,**

*Information Collection Clearance Officer, Fish and Wildlife Service.*

[FR Doc. E9–15832 Filed 7–2–09; 8:45 am]

BILLING CODE 4310-55-S

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R4–ES–2009–N121; 40120–1113–0000–C4]

## Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 23 Southeastern Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of initiation of reviews; request for information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of 23 species under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that the classification of species as threatened or endangered on the Lists of Endangered and Threatened Wildlife and Plants is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

**DATES:** To allow us adequate time to conduct these reviews, we must receive your comments or information on or before September 4, 2009. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** For instructions on how to submit information and review information we receive on these species, see "Request for New Information."

**FOR FURTHER INFORMATION CONTACT:** For species-specific information, contact the appropriate person under "Request for New Information."

**SUPPLEMENTARY INFORMATION:**

Under the Act (16 USC 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. If we consider delisting a species, we must support the action by the best scientific and commercial data available. We must consider if these data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. We make amendments to the List through final rules published in the **Federal Register**.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under our active review. This notice announces our active review of 15 species that are currently listed as endangered: Mississippi gopher frog (*Rana capito sevosa*), Etowah darter (*Etheostoma etowahae*), bluemask darter (*Etheostoma* sp), Cahaba shiner (*Notropis cahabae*), Cape Fear shiner (*Notropis mekistocholas*), amber darter (*Percina antesella*), Alabama sturgeon (*Scaphirhynchus suttkusi*), Tar River spinymussel (*Elliptio steinstansana*), Anthony's riversnail (*Athearnia anthonyi*), Saint Francis' satyr butterfly (*Neonympha mitchelli francisci*), Spring Creek bladderpod (*Lesquerella perforata*), bunched arrowhead (*Sagittaria fasciculata*), mountain sweet pitcher plant (*Sarracenia rubra* ssp. *jonesii*), white irisette (*Sisyrinchium dichotomum*), and Tennessee yellow-eyed grass (*Xyris tennesseensis*). This notice also announces our active review of 8 species that are currently listed as threatened: flattened musk turtle (*Sternotherus depressus*), spotfin chub (*Erimonax monachus*), Cherokee darter (*Etheostoma scotti*), Waccamaw silverside (*Menidia extensa*), Magazine Mountain shagreen (*Mesodon magazinensis*), Price's potato-bean (*Apios priceana*), Cumberland rosemary (*Conradina verticillata*), and Heller's blazing star (*Liatris helleri*). The List is also available on our internet site at *http://endangered.fws.gov/wildlife.html#Species*.

### What Information Do We Consider in a 5-Year Review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

### Definitions Related to This Notice

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all of a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

### How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its 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.

### What Could Happen as a Result of This Review?

If we find that there is new information concerning any of these 23 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

### Request for New Information

To do any of the following, contact the person associated with the species you are interested in below:

(a) To get more information on a species,

(b) To submit information on a species, or

(c) To review information we receive, which will be available for public inspection by appointment, during

normal business hours, at the listed addresses.

• Spotfin chub, Tar River spinymussel, mountain sweet pitcher plant, Heller's blazing star, bunched arrowhead, and white irisette: Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina, 28801, fax 828/258–5330. For information on the spotfin chub, contact Bob Butler at the address above (phone 828/258–3939 ext. 235, e-mail *bob_butler@fws.gov*). For the Tar River spinymussel, contact John Fridell at the address above (828/258–3939 ext. 225, e-mail *john_fridell@fws.gov*). For the bunched arrowhead, Heller's blazing star, mountain sweet pitcher plant, and white irisette, contact Carolyn Wells at the address above (phone 828/258–3939 ext. 231, e-mail *carolyn_wells@fws.gov*).

• Amber darter, Etowah darter, and Cherokee darter: Athens Field Office, U.S. Fish and Wildlife Service, West Park Center Suite D, 105 West Park Drive, Athens, Georgia, 30606, fax 706/613–6059. For information on the amber darter, Etowah darter, and Cherokee darter, contact Robin Goodloe at the Athens Field Office, address above (phone 706/613–9493 ext. 221, e-mail *robin_goodloe@fws.gov*).

• Bluemask darter, Anthony's riversnail, Spring Creek bladderpod, Price's potato-bean, and Cumberland rosemary: Cookeville Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee, 38501, fax 931/528–7075. For information on the bluemask darter, Spring Creek bladderpod, Price's potato-bean, and Cumberland rosemary, contact Geoff Call at the Cookeville Field Office, address above (phone 931/528–6481 ext. 213, e-mail *geoff_call@fws.gov*). For the Anthony's riversnail, contact Stephanie Chance at the Cookeville Field Office, address above (phone 931/528–6481 ext. 211, e-mail *stephanie_chance@fws.gov*).

• Magazine Mountain shagreen: Conway Field Office, U.S. Fish and Wildlife Service, 110 South Amity Road, Suite 300, Conway, Arkansas, 72032, fax 501/513–4480. For information on the Magazine Mountain shagreen, contact Chris Davidson at the Conway Field Office, address above (phone 501/513–4481, e-mail *chris_davidson@fws.gov*).

• Alabama sturgeon and Tennessee yellow-eyed grass: Daphne Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama, 36526, fax 251/441–6222. For information on the Tennessee yellow-eyed grass, contact Dan Everson at the Daphne Field Office, address above (phone 251/441–5837, e-mail *dan_everson@fws.gov*). For the Alabama sturgeon, contact Jeff Powell at the Daphne Field Office, address above (phone 251/441–5858, e-mail *jeff_powell@fws.gov*).

• Flattened musk turtle, Mississippi gopher frog, and Cahaba shiner: Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213, fax 601/965–4340. For information on the flattened musk turtle and Cahaba shiner, contact Daniel Drennen at the Jackson Field Office, address above (phone 601/321–1127, e-mail *daniel_drennen@fws.gov*). For the Mississippi gopher frog, contact Linda LaClaire at the Jackson Field Office, address above (phone 601/321–1126, e-mail *linda_laclaire@fws.gov*).

• Cape Fear shiner, Waccamaw silverside, and Saint Francis' satyr butterfly: Raleigh Field Office, U.S. Fish and Wildlife Service, PO Box 33726, Raleigh, North Carolina, 27636, fax 919/856–4556. For information on the Cape Fear shiner and Waccamaw silverside, contact David Rabon at the Raleigh Field Office, address above (phone 919/856–4520 ext. 16, e-mail *david_rabon@fws.gov*). For the Saint Francis' satyr butterfly, contact Dale Suiter at the Raleigh Field Office, address above (phone 919/856–4520 ext. 18, e-mail *dale_suiter@fws.gov*).

We request any new information concerning the status of any of these 23 species. See "What information do we consider in a 5-year review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 4, 2009.

**Linda H. Kelsey,**

*Acting Regional Director, Southeast Region.*

[FR Doc. E9–15918 Filed 7–2–09; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Navajo-Gallup Water Supply Project, New Mexico

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Availability of the Navajo-Gallup Water Supply Project Planning Report and Final Environmental Impact Statement FES 09–10.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 (as amended), Public Law (Pub. L.) 92–199, and the general authority to conduct water resources planning under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto, the Bureau of Reclamation (Reclamation), in cooperation with the Navajo Nation, Jicarilla Apache Nation, City of Gallup, State of New Mexico, Bureau of Indian Affairs, Indian Heath Service, Navajo Tribal Utility Authority, and Northwest New Mexico Council of Governments, has prepared and made available to the public a Planning Report and Final Environmental Impact Statement (PR/FEIS). This document was undertaken to provide a discussion for the (1) Various ways to provide a municipal and industrial (M&I) water supply to the Navajo Nation, City of Gallup, and Jicarilla Apache Nation; (2) identification of a preferred alternative; and (3) associated environmental impacts and costs of the No Action and two action alternatives.

**ADDRESSES:** Requests for copies should be addressed to Mr. Terry Stroh, Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado 81506; telephone (970) 248–0608; facsimile (970) 248–0601; e-mail: *tstroh@usbr.gov*. The PR/FEIS is also available on Reclamation's Web site at *http://www.usbr.gov/uc/* (click on Environmental Documents).

Copies of the PR/FEIS are available for public review and inspection at the following locations:

• Main Interior Building, Natural Resources Library, Room 1151, 1849 C Street, NW., Washington, DC.

• Bureau of Reclamation, Denver Office Library, Denver Federal Center,

Sixth and Kipling, Building 67, Room 167, Denver, Colorado.

- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7418, Salt Lake City, Utah.
- Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Durango, Colorado.
- Bureau of Reclamation, Western Colorado Area Office, 2764 Compass Drive, Suite 106, Grand Junction, Colorado.
- Bureau of Reclamation, Farmington Construction Office, 220 Bloomfield Highway, Farmington, New Mexico.

**Libraries**

- Albuquerque/Bernalillo County Library, 501 Cooper Avenue, NW., Albuquerque, New Mexico.
- Aztec Public Library, 319 South Ash, Aztec, New Mexico.
- Bloomfield City Library, 333 South First Street, Bloomfield, New Mexico.
- Cortez Public Library, 202 N. Park, Cortez, Colorado.
- Diné College Library, 1228 Yucca Street, Shiprock, New Mexico.
- Durango Public Library, 1188 E. 2nd Avenue, Durango, Colorado.
- Farmington Public Library, 2101 Farmington Avenue, Farmington, New Mexico.
- Fort Lewis College Library, 1000 Rim Drive, Durango, Colorado.
- Navajo Nation Library, Window Rock, Arizona.
- New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico.
- New Mexico State University Library, Las Cruces, New Mexico.
- San Juan College Library, 4601 College Boulevard, Farmington, New Mexico.
- University of Colorado Libraries, Government Publications, 1720 Pleasant Street, Boulder, Colorado.
- Zimmerman Library, Government Information Department, University of New Mexico, Albuquerque, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stan Powers, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Durango, Colorado 81301; telephone (970) 385–6555; facsimile (970) 385–6539; e-mail: *spowers@usbr.gov*.

**SUPPLEMENTARY INFORMATION:** The PR/FEIS describes the potential environmental impacts of constructing, operating, and maintaining a water supply system to meet project year 2040 water demands. The purpose of the proposed Federal action is to provide a long-term supply, treatment, and transmission of M&I water to the eastern portion of the Navajo Nation, Jicarilla Apache Nation, and City of Gallup, New Mexico. Construction of the Navajo-Gallup Water Supply Project was authorized in the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11).

The PR/FEIS describes and analyzes in detail three alternatives. Under the No Action Alternative, it is assumed that M&I water supplies and delivery systems would not be constructed on the eastern side of the Navajo Nation, for the City of Gallup, or for the southwestern area of the Jicarilla Apache Nation. Under the two action alternatives, the project would divert a total of 37,764 acre-feet of water per year from the San Juan River with a resulting depletion of 35,893 acre-feet, based upon the 2040 projected population with a demand rate of 160 gallons per capita per day.

Under the San Juan River-Public Service Company of New Mexico (SJR–PNM) Alternative, the Cutter diversion would require 4,645 acre-feet per year with no return flow to the San Juan River. The Public Service Company of New Mexico diversion would take the remaining 33,119 acre-feet of diversion, with an average return flow of 1,871 acre-feet.

The Navajo Indian Irrigation Project-Amarillo Alternative would divert all project water through improved NIIP facilities using both Cutter Reservoir and the Amarillo Canal. This alternative also requires the construction of a 4,500 acre-foot lined storage pond located near the Amarillo Canal.

The PR/FEIS identifies the SJR–PNM Alternative as the preferred alternative. Public Law 111–11 authorizes the Secretary of the Interior (Secretary), acting through the Commissioner of Reclamation (Commissioner), to design, construct, operate, and maintain the project in substantial accordance with the preferred alternative (SJR–PNM) described in the Planning Report and Draft Environmental Impact Statement (PR/DEIS).

**Background**

The project area includes portions of the Navajo Nation in northwestern New Mexico and northeastern Arizona, and portions of the Jicarilla Apache Nation and the City of Gallup, New Mexico. Project planning has been intermittent over the past 40 years. A project steering committee included representatives from the Navajo Nation, Jicarilla Apache Nation, City of Gallup, Bureau of Indian Affairs, Indian Health Service, Navajo Tribal Utility Authority, Northwest New Mexico Council of Governments, and Reclamation. Funding for the project has mostly been through annual congressional write-in funds and cost sharing by the Navajo and Jicarilla Apache Nations. The level of the analysis (appraisal versus feasibility level work) has been tailored to stay within the funds available. The PR/FEIS includes appraisal-level alternative designs and cost estimates. The Secretary, acting through the Commissioner, is authorized to design, construct, operate, and maintain the Navajo-Gallup Water Supply Project as described in Public Law 111–11.

**Purpose and Need for Action**

The proposed project is to provide a long-term (year 2040) supply, treatment, and transmission of M&I water to the Navajo Nation, Jicarilla Apache Nation, and the City of Gallup, New Mexico.

A long-term sustainable water supply is needed for the area to support current and future populations. The proposed project will be designed to serve a future population of approximately 250,000 people by the year 2040. Existing groundwater supplies are dwindling, have limited capacity, and are of poor quality. More than 40 percent of Navajo households rely on water hauling to meet daily water needs. The City of Gallup's groundwater levels have dropped by approximately 200 feet over the past 10 years and the supply is not expected to meet current water demands within the decade. The Jicarilla Apache people are currently not able to live and work outside the Town of Dulce on the reservation because of a lack of water supply.

**Proposed Federal Action**

The proposed project would build facilities to convey a reliable M&I water supply from Navajo Reservoir to the eastern section of the Navajo Nation, the southwestern portion of the Jicarilla Apache Nation, and the City of Gallup, New Mexico. Based upon expected populations in the year 2040, the proposed project would serve approximately 203,000 people in 43 chapters of the Navajo Nation, 1,300 people in the Jicarilla Apache Nation, and approximately 47,000 people in the City of Gallup.

The PR/DEIS was issued to the public on March 30, 2007, and a Notice of Availability of the draft EIS was published in the **Federal Register** on March 30, 2007 (72 FR 15159–15161). A 90-day public review and comment period for the PR/DEIS ended on June 28, 2007. During the public comment period, five public hearings were held. There were approximately 280 comments identified from letters and

public hearings that were addressed for inclusion in the PR/FEIS. Where appropriate, revisions were made in response to specific comments.

No decision will be made on the proposed Federal action until at least 30 days after release of the PR/FEIS. After the 30-day waiting period, Reclamation will complete a Record of Decision. The Record of Decision will state which alternative analyzed in the PR/FEIS will be implemented and discuss all factors leading to that decision.

Dated: June 5, 2009.

**Larry Walkoviak,**

*Regional Director—UC Region.*

[FR Doc. E9–15650 Filed 7–2–09; 8:45 am]

**BILLING CODE 4310–MN–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1012 (Review)]**

### Certain Frozen Fish Fillets From Vietnam; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted this review on July 1, 2008 (73 FR 37487) and determined on October 6, 2008 that it would conduct a full review (73 FR 62318, October 20, 2008). Notice of the scheduling of the Commission's review 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** on January 15, 2009 (74 FR 2616). The hearing was held in Washington, DC, on May 6, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on June 26, 2009. The views of the Commission are contained in USITC Publication 4083 (June 2009), entitled *Certain Frozen Fish Fillets from Vietnam: Investigation No. 731–TA–1012 (Review).*

By order of the Commission.

Issued: June 26, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–15797 Filed 7–2–09; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–543 (Remand Proceeding) (Enforcement Proceeding)]**

### In the Matter of Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 74) granting a joint motion to terminate the investigation based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On June 21, 2005, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Broadcom Corporation ("Broadcom") of Irvine, California, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain baseband processor chips and chipsets, transmitter and receiver (radio) chips, power control chips, and products containing same, including cellular telephone handsets by reason of infringement of five patents. 70 FR 35707 (June 21, 2005). Broadcom named Qualcomm Incorporated ("Qualcomm") of San Diego, California as the only respondent. On December 8, 2006, the Commission affirmed the ALJ's final ID finding a violation due to infringement of U.S. Patent No. 6,714,983. On June 7, 2007 the Commission issued a limited exclusion order and a cease and desist order to Qualcomm. Qualcomm appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") on August 7, 2007, which appeal was consolidated under the lead case *Kyocera Wireless Corp.* v. *International Trade Commission*, Nos. 2007–1492, et al. ("*Kyocera*").

On November 9, 2007, Broadcom filed an enforcement complaint pursuant to Commission Rule 210.75, alleging, *inter alia*, that Qualcomm has violated and continues to violate the Commission's cease and desist order. Based on Broadcom's complaint, the Commission instituted the enforcement proceeding on December 28, 2007. 72 FR 73879 (Dec. 28, 2007). On October 14, 2008, the Federal Circuit issued an opinion in *Kyocera*, remanding the underlying investigation to the Commission.

On May 6, 2009, Broadcom and Qualcomm jointly moved to terminate this investigation based upon a settlement agreement, pursuant to Commission rule 210.21 (19 CFR 210.21). On May 15, 2009, the Commission investigative attorney filed a response in support of the joint motion to terminate the investigation.

On June 11, 2009, the ALJ issued the subject ID granting the joint motion to terminate the investigation. No petitions for review of the ID were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Dated: Issued: June 30, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–15891 Filed 7–2–09; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

**[OMB Number 1121–0065]**

### Bureau of Justice Statistics; Agency Information Collection Activities: Existing Collection; Comments Requested

**ACTION:** 30-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection; National Corrections Reporting Program.

The Department of Justice (DOJ), Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register**, Volume 74, Number 80, Pages 19238–19239, on April 28, 2009. Comments are encouraged and will be accepted for "thirty days". This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William J. Sabol, Ph.D., Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202–514–1062). Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

— Enhance the quality, utility, and clarity of the information to be collected; and

— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Corrections Reporting Program. The collection includes the forms: Prisoner Admission Report, Prisoner Release Report, Parole Release Report, Prisoner in Custody at Year-end.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number(s): NCRP–1A, NCRP–1B, NCRP–1C, and NCRP–1D. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The National Corrections Reporting Program (NCRP) is the only national data collection furnishing annual individual-level information for State prisoners admitted or released during the year, those in custody at year-end, and persons discharged from parole supervision. The NCRP collects data on sentencing, time served in prison and on parole, offense, admission/release type, and demographic information. BJS, the Congress, researchers, and criminal justice practitioners use these data to describe annual movements of adult offenders through State correctional systems. Providers of the data are personnel in the State Departments of Corrections and Parole.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS anticipates 51 respondents for report year 2009 with a total annual burden of 2,254 hours. For each type of information previously provided, respondents will require an average of 8 hours to provide information on prisoner admissions and releases, 8 hours to provide information on parole releases, and 8 hours to provide information on the year-end custody prisoner population. This includes time for modifying and re-running previously written computer programs, preparing input data, and documenting the record layout. For each type of information being supplied for the first time, each respondent will require an average of 24 hours to provide information on prisoner admissions and releases, 24 hours to provide information on parole releases, and 24 hours to provide information on the year-end custody prisoner population. This includes time for developing, testing, and running new computer programs, preparing input data, and documenting the record layout. Each respondent will require an additional 2 hours documenting or explaining the data for a total of 2,254 burden hours. Magnetic media or other electronic formats are expected from all 51 respondents. The total annual burden is expected to decrease for 2010 and beyond, when computer programs written to provide data for 2009 for the first time, are rerun.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,254 total burden hours associated with this collection.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 30, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, Department of Justice.*

[FR Doc. E9–15809 Filed 7–2–09; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (NIJ) Docket No. 1497]**

### Proposed Vehicular Digital Multimedia Evidence Recording System Standard

**AGENCY:** National Institute of Justice, Office of Justice Programs, DOJ.

**ACTION:** Notice of Proposed Vehicular Digital Multimedia Evidence Recording System Standard.

**SUMMARY:** In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public an initial draft standard entitled, "Vehicular Digital Multimedia Evidence Recording System Standard." The opportunity to provide comments on this document is open to industry technical representatives; public safety agencies and organizations; forensic video analysts; research, development

and scientific communities; and all other stakeholders and interested parties. We are especially requesting input related to environmental requirements of importance to end users.

Those individuals wishing to view or provide comments on the draft document are directed to the following Web site: *http://www.justnet.org.* These comments will be considered as the standard is further developed.

**DATES:** The comment period will be open for 30 days beginning on July 6, 2009 and concluding on August 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** Casandra Robinson, by telephone at 202–305–2596 [Note: this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

Dated: June 30, 2009.

**Kristina Rose,**

*Acting Director, National Institute of Justice.*

[FR Doc. E9–15858 Filed 7–2–09; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Fire Protection (Underground Coal Mines)

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.1100–3, 75.1103–8, 75.1103–11, 75.1501(a)(3), 75.1502; Fire Protection (Underground Coal Mines) and Mine Emergency Evacuation.

**DATES:** Submit comments on or before September 4, 2009.

**ADDRESSES:** Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Rowlett.John@dol.gov,* along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Contact the employee listed in the **ADDRESSES** section of this notice.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under 30 CFR 75.1100–3, chemical fire extinguishers must be examined every 6 months and the date of the examination recorded on a permanent tag attached to the extinguisher. Under § 75.1103–8, a qualified person must examine the automatic fire sensor and warning device systems on a weekly basis, and must conduct a functional test of the complete system at least once a year. Under § 75.1103–11, each fire hydrant and hose must be tested at least once a year, and the records of those tests shall be kept in an appropriate location. Under § 75.1501(a)(3), the operator must certify that each responsible person is trained and that the certification is maintained at the mine for at least one year. Under § 75.1502, the program of instruction requires revisions to existing fire-fighting and evacuation plans to address emergencies, and requires training of miners regarding the mine emergency evacuation fire-fighting plan for all emergencies created as a result of a fire, an explosion, or a gas or water inundation.

#### II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting "Rules & Regs", and then selecting "FedReg.Docs". On the next screen, select "Paperwork Reduction Act Supporting Statement" to view documents supporting the **Federal Register** Notice.

#### III. Current Actions

30 CFR 75.1100–3, 75.1103–8, 75.1103–11, 75.1501(a)(3) and 75.1502 requires chemical fire extinguishers to be examined every 6 months; requires operators to establish a program for the instruction of all miners in the proper fire fighting and evacuation procedures in the event of an emergency; requires operators to conduct fire drills; requires a qualified person to examine the automatic fire sensor and warning device systems; and requires that each fire hydrant and hose be tested; requires the mine operator to train all miners about the requirements of this section and the identity of the responsible person(s) designated by the operator for the work-shift. The operator also is required to instruct miners of any change in the identity of the responsible person before the start of their work-shift and any change during the shift; includes all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation in the program of instruction. This section required revisions to existing fire-fighting and evacuation plans to address these emergencies, required training of miners regarding the mine emergency evacuation fire-fighting plan, and requires that mine operators train miners in any revisions to the plan after its submission to MSHA for approval.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Fire Protection (Underground Coal Mines).

*OMB Number:* 1219–0054.

*Frequency:* On Occasion.

*Affected Public:* Business or other for-profit.

*Respondents:* 622.

*Responses:* 339,768.

*Total Burden Hours:* 75,729 hours.

*Total Burden Cost (operating/maintaining):* $1,344.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 29th day of June 2009.

**John Rowlett,**

*Director, Management Services Division.*

[FR Doc. E9–15792 Filed 7–2–09; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans, PTE 76–1, PTE 77–10, PTE 78–6

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that the Department can properly assess the impact of its information collection requirements on respondents and minimize the reporting burden (time and financial resources) on the public and that the public can understand the Department's collection instruments and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments concerning the information collections incorporated in three related prohibited transactions class exemptions (PTEs) that apply to certain transactions involving collectively bargained multiple employer plans. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before September 4, 2009.

**ADDRESSES:** Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (210) 693–8410, FAX (202) 219–4745 (the foregoing are not toll-free numbers). Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

This ICR covers information collections contained in three related prohibited transaction class exemptions: PTE 76–1, PTE 77–10, and PTE 78–6. All three of these exemptions cover transactions that were recognized by the Department as being well-established, reasonable and customary transactions in which collectively bargained multiple employer plans (principally, multiemployer plans, but also including other collectively bargained multiple employer plans) frequently engage in order to carry out their purposes.

PTE 76–1 provides relief, under specified conditions, for three types of transactions: (1) Part A of PTE 76–1 permits collectively bargained multiple employer plans to take several types of actions regarding delinquent or uncollectible employer contributions; (2) Part B of PTE 76–1 permits collectively bargained multiple employer plans, under specified conditions, to make construction loans to participating employers; and (3) Part C of PTE 76–1 permits collectively bargained multiple employer plans to share office space and administrative services, and the costs associated with such office space and services, with parties in interest. PTE 77–10 complements Part C of PTE 76–1 by providing relief from the prohibitions of subsection 406(b)(2) of ERISA with respect to collectively bargained multiple employer plans sharing office space and administrative services with parties in interest if specific conditions are met. PTE 78–6 provides an exemption to collectively bargained multiple employer apprenticeship plans for the purchase or leasing of personal property from a contributing employer (or its wholly owned subsidiary) and for the leasing of real property (other than office space within the contemplation of section 408(b)(2) of ERISA) from a contributing employer (or its wholly owned subsidiary) or an employee organization any of whose members' work results in contributions being made to the plan.

Each of these PTEs requires, as part of its conditions, either written agreements, recordkeeping, or both. The Department has combined the information collection provisions of the three PTEs into one information collection request (ICR) because it believes that the public benefits from having the opportunity to collectively review these closely related exemptions and their similar information collections. The Department previously submitted an ICR to the Office of Management and Budget (OMB) for approval of the information collections in PTEs 76–1, 77–10, and 78–6 and received OMB approval under the OMB Control No. 1210–0058. The current approval is scheduled to expire on October 31, 2009.

#### II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submission of responses.

#### III. Current Action

This notice requests comments on the proposed extension of the approval of the ICR relating to PTEs 76–1, 77–10, and 78–6. The Department is not proposing or implementing changes to the existing information collection requirements at this time. The following summarizes the ICR and the current burden estimates:

*Type of Review:* Extension of a currently approved collection of information.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Titles:* Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans, PTCE 76–1; PTCE 77–10, PTCE 78–6.

*OMB Number:* 1210–0058.

*Affected Public:* Business or other for-profit; Not-for-profit institutions.

*Respondents:* 4,565.

*Frequency of Response:* On occasion.
*Responses:* 4,565.
*Estimated Total Burden Hours:* 1,225.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: June 26, 2009.

**Joseph S. Piacentini,**

*Director, Office of Policy and Research, Employee Benefits Security Administration.*

[FR Doc. E9–15774 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training Service (VETS)

### Fiscal Years (FY) 2009 and 2010 Stand Down Grant Award Requests

**ACTION:** Follow up announcement of available FY 2009 and FY 2010 funds to support local Stand Down events.

**AGENCY:** Veterans' Employment and Training Service, Labor.

*Announcement Type:* Follow-up Notice of Available Funds and Solicitation for Grant Applications. The full announcement is posted on the VETS Web site at: *http://www.dol.gov/vets/programs/stand%20down/main.htm.*

*Funding Opportunity Number:* 17–805.

*Key Dates:* To be considered for FY 2009 funding, applications must be received at least sixty (60) days prior to the event and no later than July 30, 2009. Applications for events planned in FY 2010 must be received at least sixty (60) days prior to the event and no later than July 30, 2010.

*Funding Opportunity Description:* The U.S. Department of Labor (USDOL), Veterans' Employment and Training Service (VETS) continues to support local Stand Down events that assist homeless veterans. A Stand Down is an event held in a local community where homeless veterans are provided with a wide variety of social services including employment assistance.

Under this announcement, VETS anticipates that up to $400,000 will be available in each year for grant awards of up to a maximum of $10,000 per multi-day event (more than one day), and a maximum of $7,000 for a one (1) day event. VETS expects to award approximately forty-five (45) grants each fiscal year. Availability of FY 2010 funds will be dependent upon Congressional appropriations. Applications for Stand Down funds will be accepted from State Workforce Agencies and State and local Workforce Investment Boards, Veterans Service Organizations (VSO), local public agencies, and non-profit organizations, including community and faith-based organizations. USDOL is not authorized to award grant funds to organizations that are registered with Internal Revenue Service (IRS) as a 501(c)(4) organization.

Applications for Stand Down grant funding should be submitted to the appropriate State Director of Veterans Employment and Training/Grant Officer Technical Representative (DVET/GOTR). Address and contact information for each State DVET/GOTR can be found at Web site address: *http://www.dol.gov/vets/aboutvets/contacts/main.htm.* The closing date for receipt of applications is sixty (60) days prior to the event or July 30, 2009. Any events approved in FY 2009 must be held prior to December 31, 2009.

Applications for events planned in FY 2010 must be received at least sixty (60) days prior to the event and no later than July 30, 2010.

The full Solicitation for Grant Application for Stand Downs is posted on the VETS Web site (*http://www.dol.gov/vets/aboutvets/contacts/main.htm.* If you need to speak to a person concerning these grants, or if you have issues regarding access to the VETS Web site, you may telephone Kenneth Fenner at 202–693–4728 (not a toll-free number).

Signed at Washington, DC this 29th day of June 2009.

**Cassandra R. Mitchell,**

*Grant Officer.*

[FR Doc. E9–15772 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–79–P

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training

### The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app.II). The authority of the ACVETEO is codified in Title 38 U.S. Code, section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; and assisting to conduct outreach to employers seeking to hire veterans. The ACVETEO will conduct a business meeting on Wednesday, August 5, 2009 from 8:30 a.m. to 4 p.m., at the Hyatt Regency Washington on Capitol Hill Hotel, 400 New Jersey Avenue, NW., Ticonderoga room lower level, Washington, DC 20001.

The ACVETEO will discuss programs to assist veterans seeking employment and to raise employer awareness as to the advantages of hiring veterans, with special emphasis on employer outreach and wounded and injured veterans. There will be an opportunity for persons or organizations to address the committee. Any individual or organization that wishes to do so should contact Margaret Hill Watts at (202) 693–4744. Time constraints may limit the number of presentations.

Individuals needing special accommodations should notify Margaret Hill Watts at (202) 693–4744 by July 13, 2009.

Signed in Washington, DC, this 29th day of June 2009.

**John M. McWilliam,**

*Deputy Assistant Secretary, Veterans' Employment and Training Service.*

[FR Doc. E9–15771 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–79–P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### 146th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 146th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on July 21–23, 2009.

The three-day meeting will take place in Room N 3437 A&B, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9 a.m. to approximately 5 p.m. each day, with a one hour break for lunch, is for Council members to hear testimony from invited witnesses and to receive an update from the Employee

Benefits Security Administration (EBSA).

The Council will study the following issues: (1) Approaches for Retirement Security in the United States, (2) Stable Value Funds and Retirement Security in the Current Economic Conditions, and (3) Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries. The schedule for testimony and discussion of these issues generally will be one issue per day in the order noted above. Descriptions of these topics are available on the Advisory Council page of the EBSA Web site, at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html*. The EBSA update is scheduled for the afternoon of July 23, subject to change.

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before July 14, 2009 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements may also be submitted electronically to *good.larry@dol.gov*. Relevant statements received on or before July 14, 2009 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by July 14 at the address indicated.

Signed at Washington, DC, this 30th day of June 2009.

**Alan D. Lebowitz,**

*Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration.*

[FR Doc. E9–15804 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,268]**

### LDS Test and Measurement LLC, Middleton, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 20, 2009, in response to a petition filed by a company official on behalf of workers of LDS Test and Measurement, LLC, Middleton, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of June 2009.

**Linda G. Poole,**

*Certifying Officer. Division of Trade Adjustment Assistance.*

[FR Doc. E9–15746 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,340]**

### Bowne of Detroit, Detroit, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 22, 2009, in response to a worker petition filed on behalf of workers at Bowne of Detroit, 610 West Congress, Detroit, Michigan.

The petitioning group of workers is covered by an earlier petition filed on June 9, 2009 (instituted on June 10, 2009) that is the subject of an ongoing investigation for which a determination has not yet been issued (TA–W–71,137; Bowne, 610 West Congress, Detroit, Michigan). Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

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

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15742 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,394]**

### Insert Molding Technologies, Inc., Warren, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2009 in response to a petition filed on behalf of workers at Insert Molding Technologies, Inc., Warren, Pennsylvania. The workers at the subject facility produce molded plastic parts.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15743 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,353]**

### Straits Steel and Wire Company, 10935 Estate Lane, Dallas, TX; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 21, 2009 in response to a worker petition filed by a company official on behalf of workers of Straits Steel and Wire Company, Dallas, Texas.

The petitioning group of workers is covered by an earlier petition (TA–W–70,287) filed on May 20, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 3rd day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15747 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,476]**

### Rockford Corporation, Walker, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 22, 2009, in response to a petition filed on behalf of workers at Rockford Corporation, Walker, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of June 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15750 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,875]**

### Eastern Display, a Division of Art Guild, Inc., Providence, RI; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 1, 2009 in response to a petition filed by a company official on behalf of workers of Eastern Display, a Division of Art Guild, Inc., Providence, Rhode Island.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15744 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,006]**

### Endless Summer, Inc., 2503 North Neergard, Springfield, MO; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 5, 2009 in response to a worker petition filed on behalf of workers of Endless Summer, Inc., Springfield, Missouri.

The petitioning group of workers is covered by an earlier petition (TA–W–71,003) filed on June 5, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 11th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15767 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,001]**

### Keihin IPT Manufacturing, Inc., Greenfield, IN; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 5, 2009 in response to a worker petition filed by a company official on behalf of workers of Keihin IPT Manufacturing, Inc., Greenfield, Indiana.

The petitioning group of workers is covered by an earlier petition (TA–W–70,984) filed on June 5, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

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

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15766 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,998]**

### Kelhin IPT Manufacturing, Inc., 400 New Road, Greenfield, IN; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 5, 2009 in response to a worker petition filed by a company official on behalf of workers of Kelhin IPT Manufacturing, Inc., Greenfield, Indiana.

The petitioning group of workers is covered by an earlier petition (TA–W–70,984) filed on June 5, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 11th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15765 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,951]**

### AT&T Yellow Pages, Troy, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on June 4, 2009, filed by a State Workforce Office on behalf of workers of AT&T Yellow Pages, Troy, Michigan.

The State Workforce Official has chosen to withdraw the petition. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC this 24th day of June 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15764 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,830]**

### Eclipse Manufacturing Company, 403 Allen P. Deakins Road, Pikeville, TN; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 1, 2009 in response to a worker petition filed by a company official on behalf of workers of Eclipse Manufacturing Company, Pikeville, Tennessee.

The petitioning group of workers is covered by an earlier petition (TA–W–70,486) filed on May 22, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 5th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15763 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,816]**

### Callaway Golf Ball Operations, Inc., 425 Meadow Street, Chicopee, MA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 29, 2009 in response to a petition filed by a company official on behalf of workers of Callaway Golf Ball Operations, Inc., Chicopee, Massachusetts.

The subject worker group is covered by an earlier petition (TA–W–70,744) filed on May 29, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 19th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15762 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,769]**

### The Berquist Company, Touch Screen Division, 301 Washington Street, Cannon Falls, MN; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 29, 2009 in response to a worker petition filed by a Minnesota Agency Representative on behalf of workers of The Berquist Company, Touch Screen Division, Cannon Falls, Minnesota.

The petitioning group of workers is covered by an earlier petition (TA–W–70,019) filed on May 18, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 9th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15761 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,701]**

### Zebra Technologies, Inc., 333 Corporate Woods Parkway, Vernon Hills, IL; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 28, 2009 in response to a worker petition filed by a company official on behalf of workers of Zebra Technologies, Inc., Vernon Hills, Illinois.

The petitioning group of workers is covered by an earlier petition (TA–W–70,463) filed on May 22, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 9th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15760 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,371]**

### Computer Sciences Corporation, Foremost Account, 5600 Beech Tree Lane, Caledonia, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 21, 2009 in response to a worker petition filed on behalf of workers of Computer Sciences Corporation, Foremost Account, Caledonia, Michigan.

The petitioning group of workers is covered by an earlier petition (TA–W–70,340) filed on May 21, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 3rd day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15748 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,337; TA–W–71,337A]**

### Notice of Termination of Investigation; Craftex Mills, Inc., Chalfont, PA; Craftex Mills, Inc., Auburn, PA

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 22, 2009 in response to a petition filed on behalf of workers of Craftex Mills, Inc., Chalfont, Pennsylvania (TA–W–71,337) and Craftex Mills, Inc., Auburn, Pennsylvania (TA–W–71,337A).

The petitioning worker group is included in an earlier petition (TA–W–70,096) filed on May 18, 2009, that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

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

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15770 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,331]**

### Eos Airlines, Inc., Purchase, NY; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 22, 2009 in response to a worker petition filed on behalf of workers of Eos Airlines, Incorporated, Purchase, New York.

The Department issued a negative determination (TA–W–65,739) applicable to the petitioning group of workers on April 14, 2009 and a negative determination regarding an application for reconsideration on June 22, 2009.

The current petition regarding the investigation has been deemed invalid. All petitioners were separated more than one year prior to the date of petition. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15769 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–71,238]**

### John Maneely Company, Wheatland Tube Co. Division, a.k.a. Sharon Tube Co., 134 Mill Street, Sharon, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 16, 2009 in response to a petition filed by United Steelworkers union officials on behalf of workers of John Maneely Company, Wheatland Tube Co. Division, a.k.a. Sharon Tube Co., 134 Mill Street, Sharon, Pennsylvania.

The subject worker group is covered by an earlier petition (TA–W–71,184) filed on June 16, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 19th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15768 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,899]**

### John Maneely Company, Wheatland Tube Co. Division, A.K.A. Sharon Tube Co., Sharon, PA; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 7, 2009 in response to a petition filed by United Steelworkers union officials on behalf of workers of John Maneely Company, Wheatland Tube Co. Division, a.k.a. Sharon Tube Co., Sharon, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15745 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,543]**

### Mercedes-Benz, MBUSI, 1 Mercedes Drive,Vance, AL; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 26, 2009 in response to a worker petition filed on behalf of workers of Mercedes-Benz, MBUSI, Vance, Alabama.

The petitioning group of workers is covered by an earlier petition (TA–W–70,272) filed on May 20, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 11th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15752 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,695]**

### Leggett and Platt, Whittier, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 27, 2009, in response to a petition filed by the company on behalf of workers of Leggett and Platt, Whittier, California.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of June 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15759 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,678]**

### Quality Metal Coatings, Inc., 122 Access Road, P.O. Box 427, Saint Mary's, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 28, 2009 in response to a worker petition filed by a company official on behalf of workers of Quality Metal Coatings, Inc., Saint Mary's, Pennsylvania.

The petitioning group of workers is covered by an earlier petition (TA–W–70,639) filed on May 27, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 9th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15758 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,653]**

### American Appliance Products, Inc., 1129 Myatt Boulevard, Madison, TN; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 27, 2009 in response to a worker petition filed by a company official on behalf of workers of American Appliance Products, Inc., Madison, Tennessee.

The petitioning group of workers is covered by an earlier petition (TA–W–70,240) filed on May 20, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 9th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15757 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,641]**

### Best Textiles International Ltd, New York, NY; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 27, 2009 in response to a worker petition filed by the State of Georgia Employment and Training Consultant on behalf of workers of Best Textiles International LTD, New York, New York.

The petition regarding the investigation has been deemed invalid. State agency representatives cannot file petitions for workers located in another state. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15756 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,615]**

### Adecco Technical, Personal Laser Solutions Division, Working On-Site at Hewlett Packard, Boise, ID; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 27, 2009 in response to a worker petition filed on behalf of workers of Adecco Technical, Personal Laser Solutions Division, working on-site at Hewlett Packard, Boise, Idaho.

The petitioning group of workers is covered by an earlier petition (TA–W–70,026) filed on May 18, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC this 24th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15755 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,560]**

### URS Corporation, Washington Division, Working On-Site at Caterpillar Technical Center Building G, 14009 Old Galena Road, Mossville, IL; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 26, 2009 in response to a worker petition filed on behalf of workers of URS Corporation, Washington Division, working on-site at Caterpillar Technical Center Building G, Mossville, Illinois.

The petitioning group of workers is covered by an earlier petition (TA–W–70,424) filed on May 22, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 3rd day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15754 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,552]**

### Meridian Automotive Systems, 6701 Statesville Boulevard, Salisbury, North Carolina; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 22, 2009 in response to a worker petition filed by a North Carolina State Agency Representative on behalf of workers of Meridian Automotive Systems, Salisbury, North Carolina.

The petitioning group of workers is covered by an earlier petition (TA–W–70,529) filed on May 26, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 3rd day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15753 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,535]**

### NCI–Ceco Building Systems, Rocky Mount, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 26, 2009, in response to a petition filed on behalf of workers at NCI–Ceco Building Systems, Rocky Mount, North Carolina.

The petitioning group of workers is covered by an earlier petition (TA–W–70,518) filed on May 26, 2009, that is the subject of an ongoing investigation for which a determination has not yet been issued.

Further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 17th day of June 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15751 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–70,439]**

### Signature Aluminum, 93 Werner Road, Greenville, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on May 22, 2009 in response to a worker petition filed on behalf of workers of Signature Aluminum, Greenville, Pennsylvania.

The petitioning group of workers is covered by an earlier petition (TA–W–70,189) filed on May 19, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation under this petition has been terminated.

Signed at Washington, DC, this 9th day of June 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–15749 Filed 7–2–09; 8:45 am]

BILLING CODE 4510–FN–P

## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[Docket No. 2009–4 CRB DD 2005–2006]**

### Distribution of 2005 and 2006 Digital Audio Recording Royalty Funds

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Order denying request for distribution; Notice announcing commencement of proceeding and requesting petitions to participate.

**SUMMARY:** The Copyright Royalty Judges are denying a request for distribution of digital audio recording technology ("DART") royalties and announcing the commencement of a proceeding to determine the distribution of royalty fees in the 2005 and 2006 DART Sound Recordings Funds. The Judges also are announcing the date by which a party who wishes to participate in the distribution proceeding must file its Petition to Participate and the accompanying filing fee, if applicable.

**DATES:** Petitions to Participate and the filing fee, if applicable, are due no later than August 5, 2009.

**ADDRESSES:** An original, five copies, and an electronic copy in Portable Document Format (PDF) on a CD of the Petition to Participate, along with a $150 filing fee, if applicable, must be delivered to the Copyright Royalty Board by either mail or hand delivery. Petitions to Participate may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), Petitions to Participate, along with the $150 filing fee, if applicable, must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand-delivered by a private party, Petitions to Participate, along with the filing fee, if applicable, must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, Petitions to Participate, along with the filing fee, if applicable, must be delivered to the Congressional Courier Acceptance Site, located at 2nd and D Streets, NE., Washington, DC between 8:30 a.m. and 4 p.m. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

**FOR FURTHER INFORMATION CONTACT:** LaKeshia Brent, CRB Program Specialist, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 30, 2009, Edward Whitney Mazique filed a motion in which he requested a share of royalties remaining in the 2005 and 2006 Sound Recordings Funds.[1] AARC opposes the motion, arguing, among other things, that the remaining royalties are still in controversy and that a hearing is required to determine their proper distribution. AARC contends, however, that such a hearing should be postponed indefinitely because the costs of holding one might "outweigh the financial results of the proceeding." In light of the participants' continued inability to reach a settlement with respect to the remaining funds, a proceeding is warranted. Therefore, the motion is denied and the Judges hereby announce the commencement of a proceeding and request Petitions to Participate from interested persons. The Judges are consolidating the 2005 and 2006 royalty years into a single proceeding due to the low dollar amount in controversy and to enhance administrative efficiency.

#### Petitions to Participate

Petitions to Participate must be filed in accordance with 37 CFR 351.1(b). Petitions to Participate must be accompanied by a $150 filing fee, if applicable.[2] If a petitioner believes that the contested amount of that petitioner's claim will be $10,000 or less, petitioner shall state that in its petition and need not include the $150 filing fee.[3]

In accordance with 37 CFR 350.2 (Representation), only attorneys who are members of the bar in one or more states and in good standing may represent parties before the Judges, unless a party is an individual who represents herself or himself.

Dated: June 30, 2009.

**James Scott Sledge,**

*Chief U.S. Copyright Royalty Judge.*

[FR Doc. E9–15908 Filed 7–2–09; 8:45 am]

BILLING CODE 1410–72–P

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[1] On July 23, 2007, the Judges ordered a distribution of 98% of the 2006 Sound Recordings Fund to the Alliance of Artists and Recording Companies ("AARC"). In the Matter of Distribution of 2006 Digital Audio Recording Royalty Funds, Docket No. 2007–2 CRB DD 2006. On November 16, 2006, the Judges ordered a distribution of 98% of the royalties in the 2005 Sound Recordings Fund to AARC and Donald Johnson. In the Matter of Distribution of 2005 Digital Audio Recording Royalty Funds, Docket No. 2006–4 CRB DD 2005. In the latter order, the Judges also denied AARC's motion to dismiss Mr. Mazique's claim. The current order concerns the remaining 2% of the 2005 and 2006 Sound Recordings Funds (both the Copyright Owners Subfund and the Featured Artists Subfund), which, according to AARC, total approximately $60,000 ($20,000 for the 2005 Fund and $40,000 for the 2006 Fund). Opposition of the Alliance of Artists and Recording Companies to Motion Filed By [Edward Mazique] at 5 (May 7, 2009). In his motion, Mr. Mazique asks that the remaining 2% of the 2005 and 2006 Sound Recordings Funds be divided equally among all claimants, including himself, other than AARC and "any parties, individuals etc., that have arrangements or have already settled with AARC."

[2] Parties must pay the filing fee with a check or money order made payable to "Copyright Royalty Board." If a check is returned for lack of sufficient funds the corresponding Petition to Participate will be dismissed.

[3] 37 CFR 351.1(b)(4).

## NATIONAL INSTITUTE FOR LITERACY

### Waiver for the Literacy Information and Communication (LINCS) Resource Collections and Regional Resource Centers

**AGENCY:** National Institute for Literacy.

**ACTION:** Notice of waiver for the Literacy Information and Communication (LINCS) Resource Collections and Regional Resource Centers.

**SUMMARY:** The Acting Director waives the requirements in 34 CFR 75.261(c)(2) of the Education Department General Administrative Regulations (EDGAR) that generally prohibit the extension of grants beyond the expiration date when the extension requires additional Federal funds or the extension involves any change in the approved activities under the project. These waivers would enable the current eligible grantees under LINCS to apply for and continue to receive Federal funding beyond the original 36-month period of performance established in the grant application notices published in the **Federal Register** at 71 FR 43628 and 71 FR 44716 and in their grant award notices.

**DATES:** This notice is effective July 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Miller, U.S. Department of Education, 400 Maryland Avenue, SW., room 11146, Potomac Center Plaza, Washington, DC 20202–7242. Telephone: (202) 245–7731.

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by requesting it from the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Background and Waiver of 34 CFR 75.261(c)(2)

Title II of the Workforce Investment Act of 1998 (Pub. L. 105–220), commonly known as the Adult Education and Family Literacy Act (AEFLA), established the National Institute for Literacy (NIFL or Institute) to provide national leadership on literacy, coordinate literacy services and policy, and serve as a national resource for adult education and literacy programs by providing the best and most current information in the area of phonemic awareness, systematic phonics, fluency, and reading comprehension, and supporting the creation of new ways to offer services of proven effectiveness. [20 U.S.C. 9252(a)]. The Institute is administered under the terms of an interagency agreement entered into by the Secretaries of Education (ED), Labor (DOL), and Health and Human Services (HHS) (the Interagency Group), and seeks and receives advice on its operations from its Presidentially appointed Advisory Board. The Institute coordinates its work with the member agencies of the Interagency Group to avoid duplication and maximize the results of the agencies' investments and efforts in literacy services and policy.

The Institute's responsibilities include establishing a national electronic database of information that disseminates information to the broadest possible audience within the literacy and basic skills field and a communication network for literacy programs, providers, social service agencies, and students. 20 U.S.C. 9252(c)(1)(A). To carry out these responsibilities, the Institute awarded three LINCS Regional Resource Centers grants on September 29, 2006, and three LINCS Resource Collections grants on September 26, 2009. The project period for these grants ends on September 30, 2009, and the Institute would normally conduct a new competition to continue to fund the activities supported by these grants.

The administration is not requesting funds for the Institute in fiscal year (FY) 2010 and has proposed that the Office of Vocational and Adult Education (OVAE), which administers both the Adult Education State Grant program and the Adult Education National Leadership Activities in ED, absorb the resources formerly appropriated to the Institute. Congress is now in the process of reauthorizing the Workforce Investment Act, and, pending final decisions about the future of the Institute and its programs, the Institute does not believe that it would be in the public interest to hold new competitions for the LINCS grants until after Congress has concluded that process.

Therefore, to avoid a lapse in the availability of services provided by current LINCS grantees, the Institute waives the requirements in 34 CFR 75.261(c)(2), which prohibit the extension of grants beyond the initial period of performance if the extension requires additional Federal funds and/or if the extension involves any changes in the approved activities under the project. The Institute is waiving these requirements in order to be able to continue to fund current, eligible LINCS grantees with FY 2009 funds. The Institute's waiver of these requirements and continued funding of the current LINCS grants would extend for as long as Congress continues to appropriate funds for the existing program authority under 20 U.S.C. 9252 and possibly during a transition to any new program authorities that might be created in the reauthorization of the Workforce Investment Act. The waivers would not affect any other legal provisions governing the grants to the current, eligible LINCS grantees, including the requirements applicable to continuation awards that were established in our August 1, 2006 and August 7, 2006 **Federal Register** notices (71 FR at 44717 and 71 FR at 43628), and the requirements in 34 CFR 75.253 concerning continuation awards.

The waiver of 34 CFR 75.261(c)(2) does not exempt current LINCS grantees from the account closing provisions of 31 U.S.C. 1552(a), nor does it extend the availability of funds previously awarded to current LINCS grantees. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose.

### Regulatory Flexibility Act Certification

The Acting Director certifies that this notice of waiver will not have a significant economic impact on a substantial number of small entities.

The entities that would be affected by these waivers are:

(a) The current LINCS grantees;

(b) Public and private agencies or institutions, or non-profit organizations with knowledge and expertise in adult basic education and literacy; and,

(c) consortia of such agencies, institutions, or organizations.

The Acting Director certifies that the waivers would not have a significant economic impact on these entities because the waivers and the activities required to support the additional year of funding would not impose excessive regulatory burdens or require unnecessary Federal supervision. The waivers would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard for continuation awards,

**Paperwork Reduction Act of 1995**

This notice of waiver does not contain any information collection requirements.

**Intergovernmental Review**

The LINCS grants are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program and these grants.

**Electronic Access to This Document**

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

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

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

**Program Authority:** 20 U.S.C. 9295.

Dated: June 29, 2009.

**Daniel J. Miller,**

*Acting Director, National Institute for Literacy.*

[FR Doc. E9–15728 Filed 7–2–09; 8:45 am]

**BILLING CODE 6055–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before August 5, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

*Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

*E-mail: request.schedule@nara.gov.*

*FAX:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of Agriculture, Agricultural Research Service (N1–310–09–1, 1 item, 1 temporary item). Records relating to volunteers serving at the U.S.

Arboretum, including such files as applications and records of hours worked.

2. Department of the Army, Agency-wide (N1–AU–09–12, 1 item, 1 temporary item). Master files of an electronic information system that contains information concerning the scheduling of training events, such as lesson plans, lists of required resources, and user identification data.

3. Department of the Army, Agency-wide (N1–AU–09–13, 1 item, 1 temporary item). Master files of an electronic information system that contains field artillery simulation training data, including scenarios, threat conditions, and geographic parameters.

4. Department of the Army, Agency-wide (N1–AU–09–14, 1 item, 1 temporary item). Master files of an electronic information system that contains distributed learning courseware and includes such data as name of developer, development completion dates, and contract award information.

5. Department of the Army, Agency-wide (N1–AU–09–15, 1 item, 1 temporary item). Master files of an electronic information system that contains combat training simulation data, such as battle scenarios and tactics, weapons system descriptions, and force structure information.

6. Department of the Army, Agency-wide (N1–AU–09–17, 1 item, 1 temporary item). Master files of an electronic information system that contains information concerning the accreditation of Army training schools, including assessments and evaluations of instructors, services, facilities, and equipment.

7. Department of the Army, Agency-wide (N1–AU–09–18, 1 item, 1 temporary item). Master files of an electronic information system that contains Training and Doctrine Command budget distribution data, including information concerning transactions, release of funds, and budget reporting.

8. Department of the Army, Agency-wide (N1–AU–09–31, 1 item, 1 temporary item). Master files of an electronic information system that contains assessment data on Army leaders, such as evaluation reports, rating sheets, and reaction test observations.

9. Department of Defense, Agency-wide (N1–330–08–4, 55 items, 33 temporary items). Visual information products, such as photographs, video recordings, motion pictures, sound recordings, and graphic arts, and related production materials that do not meet specified criteria for permanent retention. Visual information products proposed for permanent retention include, but are not limited to, records that depict such activities and subjects as engagements with enemy forces, rescues, boarding of vessels, battle damage to buildings and weapons systems, the capture of enemy personnel, truce negotiations and signings, significant exercises, and visits of high level officials.

10. Department of Defense, Office of the Secretary (N1–330–09–3, 1 item, 1 temporary item). Master files of electronic information system that contains information on participants in a scholarship program administered by the agency for students in scientific and technical disciplines. These records include biographical information, data concerning participating institutions, and funding data.

11. Department of Defense, Office of the Secretary (N1–330–09–4, 1 item, 1 temporary item). Master files of electronic information system that is used to track and clear shipments and materials entering the Pentagon. Records include vehicle tracking data, arrival and departure times, and waybill numbers.

12. Department of Defense, Defense Security Service (N1–446–09–3, 2 items, 1 temporary item). Case files on foreign companies that supply goods and services to the Department of Defense. Guidance and instructions for the operation on the Foreign Supplier Assessment Program are proposed for permanent retention.

13. Department of Defense, National Geospatial Intelligence Agency (N1–537–05–3, 9 items, 6 temporary items). Records relating to the production of finished intelligence, including such records as working files, presentations conducted at lower level organizations, and extra copies of finished intelligence products. Proposed for permanent retention are files on special projects, finished intelligence products and the imagery and data associated with them, and electronic finding aids.

14. Department of Defense, National Security Agency (N1–457–07–1, 146 items, 113 temporary items). Records relating to administrative management, including such records as operational summaries and reports accumulated by lower echelon offices, program planning and budget formulation files accumulated by lower echelon offices, personnel-related records such as award and promotion files, files relating to financial controls and other financial matters, physical and information security records, printing and publications records, and files concerning telecommunications. Also included are working files, schedules of daily activities, and correspondence files accumulated by offices that are not responsible for agency-wide policy formulation. Proposed for permanent retention are such records as policy files accumulated by offices responsible for policy formulation, operational summaries and reports and program planning and budget formulation files accumulated in high level offices, files on special projects, historical program records, publications, security policy files, and files relating to personnel policies and procedures.

15. Department of Energy, Office of Inspector General (N1–434–09–2, 3 items, 3 temporary items). Records relating to firearms, including such records as receipts for weapons and related equipment, logs used to maintain accountability, and training and qualifications rosters.

16. Department of Energy, Office of Inspector General (N1–434–09–3, 1 item, 1 temporary item). Files relating to allegations that do not result in an Office of Inspector General audit, including matters referred to other offices for action.

17. Department of Homeland Security, Agency-wide (N1–563–09–8, 3 items, 3 temporary items). Master files and outputs associated with an electronic information system that tracks redress requests received from individuals who were denied from or delayed in boarding transportation or entry into or departure from the United States or were identified for secondary screening.

18. Department of Homeland Security, Domestic Nuclear Detection Office (N1–563–09–9, 1 item, 1 temporary item). Master files associated with an electronic information system that contains information concerning the facilities and equipment used by Federal, State, and local government entities for nuclear detection activities.

19. Department of Homeland Security, Office of Policy (N1–563–09–3, 12 items, 4 temporary items). Records of the Office of Immigration Statistics. Included are such records as requests for immigration statistics, background materials used to produce publications, statistics relating to aliens admitted to the United States for temporary periods, and a static version of the Yearbook of Immigration Statistics as published beginning in 2004. Proposed for permanent retention are such records as the Yearbook of Immigration Statistics, including an electronic version, earlier publications containing immigration statistics, narrative annual reports concerning immigration, and detailed statistics concerning immigrants who arrived between 1895 and 1946.

20. Department of Homeland Security, Immigration and Customs Enforcement (N1–567–08–1, 8 items, 5 temporary items). Records concerning health care provided to persons in the custody of or detained by the agency. Included are such records as medical records of individual persons and data bases containing health information, statistical reports created from electronic versions of individual medical records, annual narrative reports concerning tuberculosis and infectious disease surveillance, and copies of detainee death statistics that are transferred to the Department of Justice (Justice Department statistical reports that include this data were previously approved as permanent). Proposed for permanent retention are such records as statistics concerning tuberculosis and infectious disease surveillance, death statistics not transferred to the Justice Department, and the Medical Program Operations Workload Database, which contains workload and productivity data gathered by all agency-staffed sites that provide medical care.

21. Department of the Interior, Office of the Secretary (N1–48–08–23, 1 item, 1 temporary item). Electronic data concerning the department's environmental liabilities, including such data as site information, type of contamination, site prioritization, and cost estimates. This information is used in connection with the preparation of annual financial statements.

22. Department of the Interior, Bureau of Reclamation (N1–115–09–4, 1 item, 1 temporary item). Master files associated with an electronic information system that contains data concerning government-owned land and land rights.

23. Department of the Interior, National Park Service (N1–79–08–2, 5 items, 3 temporary items). Files relating to routine law enforcement activities and the provision of emergency medical services. Proposed for permanent retention are policy and planning records relating to law enforcement and protective services and files on significant investigation and activities, such as files that document incidents involving significant damage to cultural or natural resources and files on matters that received widespread media attention.

24. Department of Justice, Justice Management Division (N1–60–09–15, 5 items, 5 temporary items). Inputs, outputs, and master files associated with an electronic information system used for telecommunications billings.

25. Department of Justice, Justice Management Division (N1–60–09–16, 2 items, 2 temporary items). Master files and outputs associated with an electronic information system that contains statistical data concerning agency employees.

26. Department of Justice, Bureau of Prisons (N1–129–09–11, 1 item, 1 temporary item). Criminal investigation case files concerning crimes committed in Federal prisons. Historically significant files will be brought to NARA's attention and appraised on a case-by-case basis.

27. Department of Justice, Bureau of Prisons (N1–129–09–20, 1 item, 1 temporary item). Electronic document management and case tracking system used for labor law cases.

28. Department of Justice, Bureau of Prisons (N1–129–09–21, 5 items, 5 temporary items). Files accumulated by the General Counsel. Included are jurisdiction files that relate to whether the Federal Government will have exclusive jurisdiction over an institution or whether jurisdiction will be shared with a State government, background files on subjects of interest to staff members, and an electronic document management and case tracking system used for litigation involving agency acquisitions and financial operations.

29. Department of Justice, Bureau of Prisons (N1–129–09–22, 2 items, 2 temporary items). Electronic document management and case tracking system used for litigation cases and administrative claims, including litigation involving agency programs and policies.

30. Department of Justice, Federal Bureau of Investigation (N1–65–07–13, 4 items, 4 temporary items). Records relating to the Computer Information Comparison Program, a program under which commercial and governmental databases are searched to match data and locate missing persons and stolen property. Included are such records as agreements between the agency and other entities, communications disseminating the results of matches, and master files containing data concerning the parameters of searches and information on dollar amounts saved or recovered as a result of searches.

31. Department of Justice, Federal Bureau of Investigation (N–65–09–12, 3 items, 3 temporary items). Records of the Office of Integrity and Compliance, including files relating to assessments of the agency's compliance with applicable laws and regulations, compliance concerns reported to the Office, and concerns reported via a contractor-operated hotline.

32. Department of Justice, Federal Bureau of Investigation (N1–65–09–14, 15 items, 15 temporary items). Human resources records not covered by the General Records Schedules, including such records as files relating to employee assistance programs, applicant processing, leave, internships, relocation, special agent selection grievances, and military reserve matters.

33. Department of Justice, Federal Bureau of Investigation (N1–65–09–19, 1 item, 1 temporary item). Non-disclosure statements for selection tests and interviews completed by applicants for positions.

34. Department of the Navy, Naval Criminal Investigative Service (N1–NU–09–5, 1 item, 1 temporary item). Technical support records associated with polygraph examinations.

35. Department of State, Bureau of Consular Affairs (N1–59–09–9, 1 item, 1 temporary item). Master files associated with an electronic information system used to track and monitor the status of adoption cases that involve emigration from or immigration to the United States.

36. Department of State, Bureau of Consular Affairs (N1–59–09–28, 1 item, 1 temporary item). Master files associated with an electronic information system used to track the application process of exchange visitors who seek a waiver from the two year residency requirements included in the Immigration and Nationality Act.

37. Department of State, Bureau of Diplomatic Security (N1–59–09–18, 1 item, 1 temporary item). Master files associated with an electronic information system that contains data collected from overseas facilities concerning crimes and security incidents.

38. Department of the Treasury, Internal Revenue Service (N1–58–09–25, 1 item, 1 temporary item). Forms used to report actions of taxpayers which indicate that that individual should be approached with caution.

39. Department of the Treasury, Internal Revenue Service (N1–58–09–26, 1 item, 1 temporary item). Master files of an electronic information system that is used to maintain, distribute, and track documents and responses relating to IRS Modernization and Information Services.

40. Department of the Treasury, Internal Revenue Service (N1–58–09–27, 1 item, 1 temporary item). Master files of an electronic information system used to identify individuals who did not accurately report income derived from tips.

41. Department of the Treasury, Internal Revenue Service (N1–58–09–

29, 2 items, 2 temporary items). Inputs and master files associated with an electronic information system that tracks contacts made by the agency with individuals other than the taxpayer whose tax liability is the subject of the requests.

42. Agency for International Development, Office of Human Resources (N1–286–09–1, 1 item, 1 temporary item). Electronic data concerning agency personnel used to facilitate human resources processes.

43. Federal Housing Finance Agency, Office of the General Counsel (N1–543–09–1, 1 item, 1 temporary item). Administrative hearing and litigation case files relating to cases in which the agency is a party or has an interest.

44. National Archives and Records Administration, Office of Records Services—Washington, D.C. (N1–64–09–3, 3 items, 3 temporary items). Master files and other records associated with an electronic information system used to process and track Freedom of Information Act requests that involve records that are not security classified.

45. National Archives and Records Administration, Office of Records Services—Washington, D.C. (N1–64–09–4, 3 items, 3 temporary items). Master files and other records associated with an electronic information system used to process and track declassification review projects and Freedom of Information Act and Mandatory Review requests that involve security classified records.

46. Office of the Director of National Intelligence, National Counterintelligence Executive (N1–576–08–5, 38 items, 16 temporary items). Records relating to facilitating U.S. counterintelligence efforts, including such materials as administrative records, attorney's working files, reference materials, extra copies of facilities information, non-substantive drafts and work papers, and background materials relating to counterintelligence matters including training. Also included are non-precedent setting determinations as to whether companies seeking to do business with the U.S. Intelligence Community pose security threats, and non-precedent setting assessments as to whether foreign financial interests seeking to invest in U.S. businesses represent a security threat. Proposed for permanent retention are precedent-setting determinations and assessments of companies and foreign financial interests. Also proposed for permanent retention are such records as controlled communications documenting the organization's mission, agendas and minutes of the National Counterintelligence Policy Board, periodic reports to Congress, working group records, evaluations of counterintelligence plans of other Federal agencies, research reports relating to counterintelligence training, record copies of counterintelligence course material, damage assessment case files and other records relating to counterintelligence breaches throughout the Federal government, records relating to technology and counterintelligence efforts, strategic policy and planning records, and substantive work papers.

47. Office of the Director of National Intelligence, Country Mission Managers (N1–576–09–2, 5 items, 1 temporary item). Non-substantive working papers relating to integrating collection and analysis on specific countries across the Intelligence Community. Proposed for permanent retention are program subject files, substantive working papers, controlled communications, and the files of boards and working groups comprised of senior officials.

48. Tennessee Valley Authority, Information Management (N1–142–09–4, 1 item, 1 temporary item). Records associated with an electronic information system that consolidates multiple work and management processes. Records relate to the management of physical plant, and work force assets related to such activities as power generation, transmission, and distribution, water treatment, and the operation of facilities and vehicles.

49. Western Area Power Administration, Agency-wide (N1–201–09–1, 5 items, 5 temporary items). Inputs, outputs, and master files associated with an electronic information system that is used for managing business process, payments, disbursements, assets, revenues, and other financial matters.

Dated: June 29, 2009.

**Sharon G. Thibodeau,**

*Deputy Assistant Archivist for Records Services—Washington, DC.*

[FR Doc. E9–15833 Filed 7–2–09; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 5, 2009. This application may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Permit Application No. 2010–003, Wayne Z. Trivelpiece, 3333 Torrey Pines, North, La Jolla, CA 92037.

*Activity for Which Permit Is Requested:* Enter Antarctic Specially Protected Areas. The applicant plans to enter Western Shore of Admiralty Bay, King George Island (ASPA 128) to access their summer only field camp of Copacabana to conduct research on seabirds. The applicant will continue their study of the behavioral ecology and population biology of the Adelie, Gentoo and chinstrap penguins and the interactions among these species and their principal avian predators: Skuas, sheathbills, and giant petrels. The study includes banding Adelie and Gentoo penguin chicks, apply radio transmitters (Txs), satellite tags (PTTs), and time-depth recorders (TDRs), conduct stomach pumping, blood collection, as well as data collection on egg sizes. The applicant also plans to conduct breeding and banded skua surveys at Lion's

Rump (ASPA 151), when conditions and ship schedules allow.

*Location:* Western Shore of Admiralty Bay, (ASPA 128) and Lion's Rump (ASPA 151), King George Island.

*Dates:* October 01, 2009 to August 31, 2010.

2. *Applicant:* Permit Application No. 2010–005, Scott Borg, Director, Division of Antarctic Sciences, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Activity for Which Permit Is Requested:* Enter Antarctic Specially Protected Areas. Principal Investigators and their teams plan to enter Arrival Heights (ASPA 122) to work on projects that include, but are not limited to operation of an ELF/VLF receiver, riometer and magnetometer for studies of the earth's magnetic field and ionosphere, high latitude neutral mesospheric and thermospheric dynamics and thermodynamics, UV monitoring, aerosols investigations, and pollution surveys. In addition, Crary Science and Engineering Center Research Associate(s) will need to access the site daily for equipment monitoring, data acquisition, calibrations, and repairs. Official scientific visitors may enter the site for educational and/or oversight purposes. Personnel from the Facilities Engineering and Maintenance Center and other support departments may need to be called upon to perform inspections, maintenance or repair functions at the facilities within the ASPA. Other personnel will need to enter APSA 122 to monitor and maintain or repair weather equipment within the site. OPP Division Directors and Program managers may need to enter the site for oversight purposes. Antarctic Environmental Enforcement Officers may enter the site to observe and determine whether modifications to the Management Plan or the USAP implementing procedures are warranted.

*Location:* Arrival Heights, Ross Island (ASPA 122).

*Dates:* October 01, 2009 to September 30, 2014.

3. *Applicant:* Permit Application No. 2010–006, Mahlon C. Kennicutt, II, Professor of Oceanography, Department of Oceanography, Eller Oceanography & Meteorology Bldg., Rm. 608, 3146 Texas A&M University, College Station, TX 77843–1112.

*Activity for Which Permit Is Requested:* Enter Antarctic Specially Protected Areas. The applicant plans to enter Arrival Heights (ASPA 122) and Hut Point (ASPA 158) to collect soil and permafrost samples as part of the ongoing environmental monitoring program. Samples will also be collected from Cape Bird (ASPA 116) as a reference control area for their study of the temporal and spatial scales of various types of disturbance in and around McMurdo Station, Antarctica.

*Location:* Cape Bird (ASPA 116), Arrival Heights (ASPA 122) and Hut Point (ASPA 158).

*Dates:* November 17, 2009 to December 31, 2009.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. E9–15933 Filed 7–2–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0276]**

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance and availability of Draft Regulatory Guide, DG–1221.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Hixon, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Control of Stainless Steel Weld Cladding of Low-Alloy Steel Components," is temporarily identified by its task number, DG–1221, which should be mentioned in all related correspondence. DG–1221 is proposed Revision 1 of Regulatory Guide 1.43, dated May 1973.

General Design Criterion I, "Quality Standards and Records," of Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR part 50) requires that components important to safety be designed, fabricated, and tested to quality standards commensurate with the importance of the safety function to be performed. Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Processing Plants," to 10 CFR part 50, requires that measures be established to ensure control of special processes such as welding and that proper testing be performed. This guide describes acceptable methods of implementing these requirements with regard to the selection and control of welding processes used for cladding ferritic steel components with austenitic stainless steel to restrict practices that could result in underclad cracking. This guide is limited to forgings and plate material and does not apply to other product forms such as castings and pipe. Adequate resistance to underclad cracking for these latter items should be assured on a case-by-case basis. This guide applies to light-water-cooled reactors.

#### II. Further Information

The NRC staff is soliciting comments on DG–1221. Comments may be accompanied by relevant information or supporting data and should mention DG–1221 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0276]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1221 may be directed to the NRC contact, Jeffrey Hixon at (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov.*

Comments would be most helpful if received by August 31, 2009. Comments received after that date will be considered if it is practical to do so, but

the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1221 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090750044.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 25th day of June 2009.

For the Nuclear Regulatory Commission.

**Mark P. Orr,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E9–15786 Filed 7–2–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0277]**

## Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance and availability of Draft Regulatory Guide, DG–1224.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Hixon, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Control of the Processing and Use of Stainless Steel," is temporarily identified by its task number, DG–1224, which should be mentioned in all related correspondence. DG–1224 is proposed Revision 1 of Regulatory Guide 1.44, dated May 1973.

General Design Criterion 1, "Quality Standards and Records," and Criterion 4, "Environmental and Dynamic Effects Design Bases," of Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR Part 50) require that components be designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety functions to be performed and that they be designed to accommodate the effects of and be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accident conditions. Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR Part 50 requires that measures be established to ensure materials control and control of special processes such as welding and heat treating and to ensure performance of reliable testing programs. This guide describes acceptable methods of implementing the above requirements with regard to control of the application and processing of stainless steel to avoid severe sensitization that could lead to stress-corrosion cracking. This guide applies to light-water-cooled reactors.

### II. Further Information

The NRC staff is soliciting comments on DG–1224. Comments may be accompanied by relevant information or supporting data and should mention DG–1224 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0277]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1224 may be directed to the NRC contact, Jeffrey Hixon at (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov*.

Comments would be most helpful if received by August 31, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1224 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090750744.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

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Dated at Rockville, Maryland, this 25th day of June 2009.

For the Nuclear Regulatory Commission.

**Mark P. Orr,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E9–15787 Filed 7–2–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0275]**

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance and availability of Draft Regulatory Guide, DG–1222.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Hixon, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Control of Preheat Temperature for Welding of Low-Alloy Steel," is temporarily identified by its task number, DG–1222, which should be mentioned in all related correspondence. DG–1222 is proposed Revision 1 of Regulatory Guide 1.50, dated May 1973.

General Design Criterion 1, "Quality Standards and Records," of Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR Part 50) requires that structures, systems, and components important to safety be designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety function to be performed. Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR Part 50 requires that measures be established to ensure control of materials and of special processes such as welding and that proper process monitoring be performed. This guide describes an acceptable method of implementing these requirements with regard to the control of welding for low-alloy steel components during initial fabrication. This guide applies to light-water-cooled reactors.

#### II. Further Information

The NRC staff is soliciting comments on DG–1222. Comments may be accompanied by relevant information or supporting data and should mention DG–1222 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0275]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1222 may be directed to the NRC contact, Jeffrey Hixon at (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov*.

Comments would be most helpful if received by August 31, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1222 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090750343.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

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Dated at Rockville, Maryland, this 25th day of June 2009.

For the Nuclear Regulatory Commission.

**Mark P. Orr,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E9–15785 Filed 7–2–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0274]**

### Draft Regulatory Guide: Issuance, Availability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of issuance and availability of Draft Regulatory Guide, DG–1223.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Hixon, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Control of Electroslag Weld Properties," is temporarily identified by its task number, DG–1223, which should be mentioned in all related correspondence. DG–1223 is proposed Revision 1 of Regulatory Guide 1.34, dated December 1972.

General Design Criterion 1, "Quality Standards and Records," of Appendix A, "General Design Criteria for Nuclear Power Plants," to Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR part 50) requires that structures, systems, and components important to safety be

designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety function to be performed. Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR part 50 requires that measures be established to ensure materials control and control of special processes such as welding and that proper testing be performed. This guide describes an acceptable method of implementing these requirements with regard to the control of weld properties when fabricating electroslag welds for nuclear components made of ferritic or austenitic materials. This guide applies to light-water reactors.

**II. Further Information**

The NRC staff is soliciting comments on DG–1223. Comments may be accompanied by relevant information or supporting data and should mention DG–1223 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0274]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1223 may be directed to the NRC contact, Jeffrey Hixon at (301) 251–7639 or e-mail to *Jeffrey.Hixon@nrc.gov.*

Comments would be most helpful if received by August 31, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1223 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090750626.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

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Dated at Rockville, Maryland, this 25th day of June, 2009.

For the Nuclear Regulatory Commission.

**Mark P. Orr,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E9–15784 Filed 7–2–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–36; NRC–2009–0278]**

## Notice of License Amendment Request of Westinghouse Electric Company LLC for Hematite Decommissioning Project, Festus, MO and Opportunity To Request a Hearing

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment request and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by September 4, 2009.

**FOR FURTHER INFORMATION CONTACT:** John J. Hayes, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, 11545 Rockville Pike, Rockville, Maryland 20852–2738 Telephone: (301) 415–5928; fax number: (301) 415–5928; e-mail: *john.hayes@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

By letter dated May 21, 2009, the U.S. Nuclear Regulatory Commission (NRC) received a license amendment application from Westinghouse Electric Company LLC (WEC or the licensee), pertaining to its planned disposal of NRC-licensed source, byproduct and special nuclear material. Regarding this material, WEC seeks approval, pursuant to 10 CFR 20.2002, of proposed disposal procedures which are not otherwise authorized by NRC regulations. WEC holds NRC License No. SNM–00033, which authorizes the licensee to conduct decommissioning activities at its former fuel cycle facility located in Festus, Missouri. The amendment request seeks authorization allowing WEC to transfer decommissioning waste to U.S. Ecology Idaho, Inc., a Resource Conservation and Recovery Act (RCRA) Subtitle C disposal facility located near Grand View, Idaho. This facility is regulated by the Idaho Department of Environmental Quality, and is not an NRC-licensed facility. Pursuant to 10 CFR 30.11 and 70.17, WEC's application also requested exemptions from the licensing requirements of 10 CFR 30.3 and 70.3 for the byproduct and special nuclear material it seeks to transfer. These exemptions are necessary because the disposal of byproduct and special nuclear material must occur at a facility licensed to possess such material, and the U.S. Ecology Idaho facility has no NRC license.

An NRC administrative review, documented in a letter to Westinghouse dated June 19, 2009, found the alternate disposal application acceptable to begin a technical review. If the NRC approves the Westinghouse request, the approval will be documented in an amendment to NRC License No. SNM–00033. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and the National Environmental Policy Act. These findings will be documented, respectively, in a Safety Evaluation Report (SER), and in a separate environmental assessment performed by the NRC.

**III. Opportunity To Request a Hearing**

The NRC hereby provides notice that this is a proceeding on an application for a license amendment as described above. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

*In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:*

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Westinghouse Electric Company, LLC, 4350 Northern Pike, Monroeville, Pennsylvania 15146–2886, Attention: Michele M. Gutman, and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by September 4, 2009.

*In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:*

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. *For each contention, the request or petition must:*

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, or other supporting document filed by the licensee, or otherwise available to the petitioner. The requester/petitioner may amend its contentions or file new contentions if there are data or conclusions in the NRC's SER or environmental analysis that differ significantly from the data or conclusions in the licensee's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within 10 days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

**IV. Further Information**

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Request for Alternate Disposal Approval and Exemption for Specific Hematite Project Waste (ML 090180071); and Review Acceptance Letter to Westinghouse on 20.2002 Alternate Disposal Request for Hematite (ML091690253). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction

contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 26th day of June 2009.

For the Nuclear Regulatory Commission.

**Rebecca Tadesse,**

*Chief, Materials Decommissioning Branch, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management, and Environmental Protection, Office of Federal and State Materials, and Environmental Management Programs.*

[FR Doc. E9–15790 Filed 7–2–09; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2008–0637]**

## Notice of Availability of Technical Specification Improvement To Relocate Surveillance Frequencies to Licensee Control—Risk-Informed Technical Specification Task Force (RITSTF) Initiative 5b, Technical Specification Task Force—425, Revision 3

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Availability.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model no significant hazards consideration (NSHC) determination. These are related to changes to standard technical specifications (STS) for Technical Specification Task Force (TSTF)—425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b," (Agencywide Documents Access Management System (ADAMS) Accession No. ML090850642). The purpose of these models is to permit the NRC to efficiently process amendments that propose to relocate technical specifications (TS) surveillance frequencies. Licensees of nuclear power reactors could then request amendments, confirming the applicability of the safety evaluation and NSHC determination to their reactors. Previously, on December 5, 2008, drafts of the model SE, model NSHC determination, and model LAR were published in the **Federal Register** for public comment (73 FR 74202–74210). Based on its evaluation of the public comments received in response to that notice, the NRC staff made appropriate changes to the models, and is including the final versions of the models in this notice. This notice also contains a description of each public comment and its disposition by the NRC staff. Based on its evaluation of the public comments, the NRC staff has decided to announce the availability of the model SE and model NSHC determination to licensees for referencing in LARs to adopt TSTF–425, Rev 3. Licensees of nuclear power reactors proposing to adopt these changes should follow the guidance in the model LAR and confirm the applicability of the model SE and model NSHC determination to their reactors.

**DATES:** The NRC staff hereby announces that the attached model SE and model NSHC determination (which differ only slightly from the versions previously published) may be used in support of plant specific applications to adopt the relocation of TS Surveillance Requirements. The staff has also posted the model LAR (which also differs only slightly from the versions previously published) to assist licensees in applying for the proposed TS change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

**FOR FURTHER INFORMATION CONTACT:** Michelle Honcharik, Mail Stop: O–12E1, Special Projects Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1774.

**SUPPLEMENTARY INFORMATION:**

### Background

This notice makes available for adoption by licensees a change to the STS that modifies surveillance frequencies. Licensees opting to apply for this change are responsible for reviewing the staff's evaluation, providing the applicable technical justifications, and providing any necessary plant-specific information. The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

TSTF–425, Rev. 3 involves the relocation of most time-based surveillance frequencies to a licensee-controlled program, called the Surveillance Frequency Control Program (SFCP), and adds the SFCP to the administrative controls section of TS. The SFCP does not include surveillance frequencies that are event driven, controlled by an existing program, or are condition-based.

Revision 3 of TSTF–425 addresses all four reactor vendor types. The owners groups participants proposed this change for incorporation into the STS. TSTF–425, Rev. 3 (ADAMS Accession No. ML090850642), can be viewed on the NRC's Web page at: *http://www.nrc.gov/reading-rm/adams.html.*

### Applicability

TSTF–425, Rev. 3, is applicable to all STS for nuclear power reactors and requires the application of the Nuclear Energy Institute (NEI) 04–10, Rev.1, "Risk-informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies," (ADAMS Accession No. ML071360456). The NRC staff reviewed and approved NEI 04–10, Rev. 1, by letter dated September 19, 2007 (ADAMS Accession No. ML072570267). Each licensee applying for the changes proposed in TSTF–425 will need to include documentation regarding the probabilistic risk assessment [PRA] technical adequacy consistent with the guidance in Section 4.2 of Regulatory Guide (RG) 1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment [PRA] Results for Risk-Informed Activities" (ADAMS Accession No. ML070240001). Applicants proposing to use PRA models for which NRC-endorsed standards do not exist must submit documentation that identifies characteristics of those models. Sections 1.2 and 1.3 of RG 1.200 provides guidance on the supporting information needed for new methods. Applicants must give supporting evidence for methods to be applied for assessing the risk contribution for those sources of risk not addressed by NRC endorsed PRA models.

The proposed change to adopt TSTF–425 does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–425, Rev. 3. Significant deviations from the approach recommended in this notice, or inclusion of additional changes to the license, however, require additional review by the NRC staff. This may increase the time and resources needed for the review or result in staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit a license amendment request that does not claim to adopt TSTF–425, Rev 3.

#### *Evaluation of Public Comments on the Model Safety Evaluation*

The NRC staff evaluated the public comments received on the model SE, model NSHC determination, and model LAR published in the **Federal Register** on December 5, 2008 (73 FR 74202–

74210). Fifteen comments were received from the pressurized and boiling water reactor owners groups, TSTF (ADAMS Accession No. ML090080162). The comments and NRC staff's disposition of each comment follows. It should be noted that the following comments were made to the **Federal Register** Notice for Comment which referenced TSTF–425, Revision 2 (ADAMS Accession No. ML080280275). TSTF–425, Revision 3 was submitted by the TSTF by letter dated March 18, 2009 (ADAMS Accession NO. ML090850642) to address NRC disposition of TSTF comment number 10.

1. (TSTF) Reference; model application (73 FR 74204). Comment: "The model application contains statements that are not consistent with a letter from a licensee to the NRC, and in many cases the model application is worded similar to the NRC-issued Safety Evaluation. For example, Section 2.1, paragraph 2, of the model application states, 'The licensee has submitted documentation which identifies the quality characteristics of those models, as described in RG 1.200 (ADAMS Accession No. ML070240001).' We recommend that the model application be reviewed from the standpoint of a letter from a specific licensee to the NRC and modify the wording to be consistent with that task. For example, if Comment 2 is incorporated, the sentence above could be rewritten as discussed in Comment 6, below."

*Disposition:* The NRC staff accepted the comment regarding consistency of a letter from a licensee to the NRC and incorporated the recommended change into the model application, where appropriate. Disposition of Comment Nos. 2 and 6 are discussed below.

2. (TSTF) Reference; model application (73 FR 74205). *Comment:* "We recommend that the licensee's documentation of PRA adequacy be a new Attachment 2 and the existing attachments be renumbered. This will allow standardization of the model amendment and allow reference to the attachment number in the Safety Evaluation."

*Disposition:* The NRC staff accepted the comment and incorporated the recommended change into the model application as new "Attachment 2, Documentation of PRA Technical Adequacy."

3. (TSTF) Reference; model application (73 FR 74205). *Comment:* "Attachment 3 of the model application includes the revised (clean) Technical Specification (TS) pages. Whether licensees are requested to include clean typed TS pages with license amendments varies among the NRC Project Managers. Given the number of pages affected by this amendment and the straightforward nature of the changes, this attachment should be marked as optional, allowing the licensee and the NRC Project Manager to decide whether clean TS pages should be submitted."

*Disposition:* Essentially, the commenter objects to providing final requested change. When an applicant desires to amend its TS, the combination of § 50.36 and 50.90 require submission of the new, clean, unmarked TS and bases. An applicant could not reasonably decline to submit proposed TS and bases under the claim that the proposed pages were not "applicable" to its request. Thus, an application is likely incomplete if it fails to contain final clean TS and bases.

Regarding marked-up pages, applicants generally submit marked-up TS pages and bases. There is, however, no direct requirement for submission of the mark-ups. Should the Staff need the mark-ups for their amendment review, § 50.90's requirement that an LAR "fully describe[s] the changes desired" could be used to request a mark-up version. No changes were made as a result of this comment.

4. (TSTF) Reference; model application (73 FR 74205) "Attachment 5 of the model application includes the affected Bases pages. In the transmittal letter for TSTF–425, Revision 1, dated April 20, 2007, the TSTF stated, "In the CLIIP model application for TSTF–425, we request that NRC reflect that appropriate plant-specific changes will be made to the Technical Specifications Bases by the licensees under the Technical Specification Bases Control Program and that, therefore, revised Bases pages need not be included. This will significantly reduce the size of the plant-specific license amendment requests submitted to adopt TSTF–425."

"As further discussed in the TSTF's response to NRC's RAI #8 (Letter from TSTF to NRC dated January 17, 2008, 'Response to NRC Request for Additional Information Regarding TSTF–425,' Revision 1, 'Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b,' dated October 2, 2007), licensees have the option of retaining the existing description of the Frequency in their Bases (as adoption of TSTF–425 does not alter any existing Frequencies) or of adopting the recommended Bases in TSTF–425. In either case, neither the existing Bases nor the revised Bases in TSTF–425 include any information material to the NRC's review. Therefore, we recommend that the model application be revised to not reference the inclusion of Bases changes. See also the related comment on the Safety Evaluation below."

*Disposition:* For more than 50 years, since the regulation governing license amendment requests, 10 CFR 50.90, has required that an applicant fully describes the changes desired, and also required the applicant to follow, as far as applicable, the form prescribed for the original operating license application. The NRC's regulation at 10 CFR 50.36 continues this philosophy of requiring applications to include technical specifications and bases. Thus, to meet the requirements of 10 CFR 50.90, the applicant will need to submit the applicable TSs and bases. An applicant who does otherwise is at risk of failing to meet the requirements in 10 CFR 50.90 of "fully describing the changes desired, and following as far as applicable, the form prescribed for original applications". No changes were made to the **Federal Register** Notice (73 FR 74202–74210) as a result of this comment.

5. (TSTF) Reference; model application (73 FR 74204). "Section 2.1, 'Applicability of the Published Safety Evaluation,' first paragraph, states, '[LICENSEE] has reviewed the safety evaluation dated [DATE]. This review included a review of the NRC staff's evaluation, the supporting information provided to support TSTF–425, Rev. 2, and the requirements specified in NEI 04–10, Rev. 1, (ADAMS Accession No. ML071360456).' It is not clear what information is included in 'the supporting information provided to support TSTF–425, Rev. 2.' In order for licensees to provide complete and accurate information, a more specific description is needed."

*Disposition:* The NRC staff accepted the comment and revised Section 2.1 to read as follows: "[LICENSEE] has reviewed the safety evaluation dated [DATE]. This review included a review of the NRC evaluation, TSTF–425, Rev. 2, and the requirements specified in NEI 04–10, Rev. 1 (ADAMS Accession No. ML071360456)." The statement regarding "The supporting information provided to support TSTF–425, Revision 2" was replaced by "TSTF–425, Revision 2" since the TSTF includes information which explains and supports the STS changes and must be considered by the licensee as part of the license amendment request to determine if the TSTF is applicable to the licensee's facility.

6. (TSTF) "Section 2.1, 'Applicability of the Published Safety Evaluation,' contains two numbered paragraphs joined by an 'and' referring to documentation of PRA adequacy. These

paragraphs do not provide sufficient guidance to a licensee on what should be submitted. Using the change in Comment 2, we recommend that these paragraphs be replaced with the following, 'Attachment 2 includes documentation with regard to PRA technical adequacy consistent with the requirements of Regulatory Guide 1.200, Revision 1, Section 4.2, and describes any PRA models without NRC-endorsed standards, including documentation of the quality characteristics of those models in accordance with Regulatory Guide 1.200.' Additional guidance, if available, such as preferred organization of the information, can be added to the model application in Attachment 2."

*Disposition:* The NRC staff accepted the comment and revised Section 2.1, "Applicability of the Published Safety Evaluation". The numbered paragraphs (1 and 2) of Section 2.1 are replaced to state the following: "Attachment 2 includes [LICENSEE] documentation with regard to PRA technical adequacy consistent with the requirements of Regulatory Guide 1.200, Revision 1 (ADAMS Accession No. ML070240001), Section 4.2, and describes any PRA models without NRC-endorsed standards, including documentation of the quality characteristics of those models in accordance with Regulatory Guide 1.200."

7. (TSTF) "We recommend Section 2.2, "Optional changes and variations," be replaced with, 'The proposed amendment is consistent with the TS changes described in TSTF–425, Rev. 2, but proposes to modify the plant-specific Surveillances, which may include more or less Surveillances than those modified in TSTF–425, Rev. 2, and those plant-specific Surveillances may have differing Surveillance numbers. The plant-specific changes are consistent with the NRC staff's model safety evaluation dated [DATE], especially the scope exclusions in Section 1.0 of that model safety evaluation, as revised.'"

*Disposition:* Deviations or variations from that described in TSTF are recognized and addressed in Notice of Opportunity to Comment on Model SE on TS Improvement to Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b, TSTF–425, Revision 2 as published in the **Federal Register** for public comment (73 FR 74203) which states: "The proposed change to adopt TSTF–425 does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–425, Rev. 2. Significant deviations from the approach recommended in this notice, or inclusion of additional changes to the license, however, require additional review by the NRC staff. This may increase the time and resources needed for the review or result in staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit a license amendment request that does not claim to adopt TSTF–425, Rev 2." No changes were made as a result of this comment.

8. (TSTF) The proposed regulatory commitment in Attachment 4 to implement NEI 04–10, Rev. 1, should be deleted. The TS Administrative Controls, 'Surveillance Frequency Control Program,' required to be adopted as part of the amendment, states, 'Changes to the Frequencies listed in the Surveillance Frequency Control Program shall be made in accordance with NEI 04–10, 'Risk-Informed Method for Control of Surveillance Frequencies,' Revision 1.'

NRC Office Instruction LIC–105, 'Managing Regulatory Commitments Made by Licensees to the NRC,' states, 'Regulatory commitments are appropriate for matters in which the staff has significant interest but which do not warrant either legally binding requirements or inclusion in Updated Final Safety Analysis Reports (UFSARs) or programs subject to a formal regulatory change control mechanism.' As TSTF–425, Rev. 2, proposes to have a Technical Specification requirement to implement NEI 04–10, Rev. 1, which is a legally binding requirement, a regulatory commitment to implement NEI 04–10, Rev. 1, is unnecessary."

*Disposition:* The NRC staff accepted the comment and revised the Model Application by deleting the reference to and the "Attachment 4 Regulatory Commitments."

9. The "Proposed No Significant Hazards Consideration Determination" Criterion 3 discussion, should be revised as shown, "To evaluate a change in the relocated surveillance frequency, [LICENSEE] will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1."

*Disposition:* The NRC staff accepted the comment and provided additional clarification with reference to the SFCP. As a clarification of the "Proposed No Significant Hazards Consideration" Criterion 3 (73 FR 74205) discussion the statement was revised as follows: "To evaluate a change in the relocated surveillance frequency, [LICENSEE] will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP."

10. (TSTF) "Section 1.0, 'Introduction,' states that all Surveillance Frequencies can be relocated except those meeting four conditions. The first three conditions are a restatement of the conditions described in TSTF–425, Rev. 2, Section 2.0, 'Proposed Change.' The fourth condition, 'Frequencies that are related to specific conditions (e.g., 'battery degradation, age, and capacity') or conditions for the performance of a surveillance requirement (e.g., 'drywell to suppression chamber differential pressure decrease'), does not appear in TSTF–425, Rev. 2, and is not consistent with the markups in TSTF–425, Rev. 2."

The TSTF's response to NRC's RAI #2 (Letter from TSTF to NRC dated January 17, 2008, 'Response to NRC Request for Additional Information Regarding TSTF–425, Revision 1,' 'Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b, dated October 2, 2007'), addressed this issue. It states, 'The TSTF agrees that the specific conditions of battery degradation, age, and capacity are not within the scope of NEI 04–10. Surveillance 3.8.6.6 in NUREG–1430, –1431, –1432, –1433, and –1434 is revised to retain the conditions of battery degradation, age, and capacity, while relocating the Frequencies consistent with the NRC-approved Limerick lead plant submittal. The Limerick Surveillances, 4.8.2.1.e and 4.8.2.1.f, contain the same requirements as ISTS Surveillance 3.8.6.6. The 60 month Frequency is relocated to the SFCP. The 12 month and 24 month Frequencies associated with degraded batteries, or batteries exceeding 85 percent of their expected life based on available capacity are relocated to the SFCP, but the criteria related to battery degradation, age, and capacity are retained.'

Therefore, based on this response and the NRC's approval of the Limerick LAR, the Surveillance Frequencies related to specific conditions are not excluded from the scope of TSTF–425, Rev. 2.

*Disposition:* The NRC Request for Additional Information (RAI) Regarding TSTF–425, Revision 1, dated October 2, 2007 (ADAMS Accession No. ML072120630) states as follows: "In NUREG–1433 SR 3.8.6.6, and NUREG–1434 SR 3.8.6.6, TSTF–425 will relocate the 12-month and 24-month surveillance frequencies associated with degraded batteries, or batteries exceeding 85 percent of their expected life based on available capacity. This is inconsistent with the proposed changes to similar SRs in NUREG–1430, NUREG–1431, and NUREG–1432, which would only relocate the 60-month frequency associated with non-degraded

batteries. The staff considers the specific conditions of battery degradation, age, and capacity as not within the scope of NEI 04–10. Provide a revision to TSTF–425 which retains, in NUREG–1433 and NUREG–1434, the SRs for degraded or old batteries." As the NRC staff indicated in the RAI and TSTF states in their response (ADAMS Accession No. ML090080162), "TSTF agrees that the specific conditions of battery degradation, age, and capacity are not within the scope of NEI 04–10." TSTF–425, Revision 2, requires the use of NEI 04–10, Revision 1, in accordance with the TS Surveillance Frequency Control Program. Therefore, Surveillance Frequencies related to specific conditions remain an exception to relocation under the SFCP. No changes were made as a result of this comment.

11. (TSTF) "Section 1.0, 'Introduction,' (**Federal Register** page 74205, first column) states, 'The TS Bases for each affected surveillance is revised to state that the frequency is set in accordance with the Surveillance Frequency Control Program. Various editorial changes may be made to the Bases as needed to facilitate the addition of the Bases changes. Some surveillance Bases do not contain a discussion of the frequency. In these cases, Bases describing the current frequency were added to maintain consistency with the Bases for similar surveillances. These instances are noted in the markup along with the source of the text. The proposed changes to the administrative controls of TS to incorporate the SFCP includes a specific reference to NEI 04–10, 'Risk-Informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies,' Revision 1 (Rev. 1), (Reference 2) as the basis for making any changes to the surveillance frequencies once they are relocated out of TS.' As discussed in Comment 4, licensees are not required to revise the Bases to adopt TSTF–425 and any voluntary Bases changes should not be submitted with the amendment as they contain no information material to the NRC's review and can be made under the Technical Specifications Bases Control Program. In addition, Bases changes are not within the scope of the NRC's review under 10 CFR 50.90 because, as stated in 10 CFR 50.36(a), Bases are not part of the Technical Specifications. Therefore, the Bases changes should not be discussed in the NRC's Safety Evaluation."

*Disposition:* As identified by 10 CFR 50.90, Application for amendment of license, construction permit, or early site permit, which states: "Whenever a holder of a license, including a construction permit and operating license under this part, and an early site permit, combined license, and manufacturing license under part 52 of this chapter, desires to amend the license or permit, application for an amendment must be filed with the Commission, as specified in §§ 50.4 or 52.3 of this chapter, as applicable, fully describing the changes desired, and following as far as applicable, the form prescribed for original applications." Applicants requesting a license amendment, such as the adoption of TSTF–425, under 10 CFR 50.90 are, therefore, required to submit an application that includes the affected TS Bases "* * * fully describing the changes desired, and following as far as applicable, the form prescribed for original applications." Therefore, while the Bases are not part of the TSs, affected TS Bases pages are required to be submitted with an application for a licensee amendment request. No changes were made as a result of this comment.

12. (TSTF) Section 3.2, "The Proposed Change Maintains Sufficient Safety Margins," should be revised as follows: 'The engineering evaluations that will be conducted by the licensee under the Surveillance Frequency Control Program when Frequencies are revised will assess the impact of the proposed Frequency change with the principle that sufficient safety margins are maintained. The guidelines used for making that assessment will include ensuring the proposed Surveillance test frequency change is not in conflict with approved industry codes and standards or adversely affects any assumptions or inputs to the safety analysis, or, if such inputs are affected, justification is provided to ensure sufficient safety margin will continue to exist.' This section is referring to Surveillance Frequency changes that will be performed by the licensee under the SFCP after approval of the license amendment, not to any evaluations provided with the license amendment request.

*Disposition:* The NRC staff accepted the comment and revised the first paragraph of Section 3.4 to state as follows: "The engineering evaluations that will be conducted by the licensee under the Surveillance Frequency Control Program when Frequencies are revised will assess the impact of the proposed Frequency change with the principle that sufficient safety margins are maintained. The guidelines used for making that assessment will include ensuring the proposed Surveillance test frequency change is not in conflict with approved industry codes and standards or adversely affects any assumptions or inputs to the safety analysis, or, if such inputs are affected, justification is provided to ensure sufficient safety margin will continue to exist."

13. "Section 3.4.1, 'Quality of the PRA,' references NEI 00–02, 'PRA Peer Review Process Guidance.' While NEI 00–02 should continue to be referenced, NEI 05–04, Rev. 2, 'Process for Performing Internal Events PRA Peer Reviews,' should also be referenced."

*Disposition:* Staff accepted the comment as NRC has endorsed NEI 05–04 Rev.2, "Process for Performing Internal Events PRA Peer Reviews," and NEI 05–04 can be referenced as an acceptable method.

14. (TSTF) "Section 3.4.6, 'Acceptance Guidelines,' first paragraph, should be revised to clarify that the acceptance guidelines are in NEI 04–10, Rev. 1, so that it is not implied that the Safety Evaluation contains additional requirements. For example, the first sentence could be revised to state, 'In accordance with NEI 04–10, Rev. 1, [LICENSEE] will quantitatively evaluate the change in total risk (including internal and external events contributions) in terms of core damage frequency (CDF) and large early release frequency (LERF) for both the individual risk impact of a proposed change in surveillance frequency and the cumulative impact from all individual changes to surveillance frequencies.'"

*Disposition:* Section 3.4.6, first paragraph, is rewritten to clarify that the Safety Evaluation does not add additional requirements. The revised text states as follows: "[LICENSEE] will quantitatively evaluate the change in total risk (including internal and external events contributions) in terms of core damage frequency (CDF) and large early release frequency (LERF) for both the individual risk impact of a proposed change in surveillance frequency and the cumulative impact from all individual changes to surveillance frequencies using the guidance contained in NRC approved NEI 04–10, Rev. 1, in accordance with the TS SFCP."

15. (TSTF) "Section 6.0, 'References', Item 2, should be revised as follows, 'NEI 04–10, Rev. 1,' for consistency with the rest of the document."

*Disposition:* The NRC staff accepted the comment and revised Section 6.0, "References," Item 2, to state: "NEI 04–10, Revision 1" to correct the omission of the revision number.

For each application the NRC staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no

significant hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to the operating license to announce the relocation of surveillance frequencies to licensee-controlled document for each plant that receives the requested change.

Dated at Rockville, MD, this 23rd day of June 2009.

For the Nuclear Regulatory Commission.

**Robert Elliott,**

*Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.*

The following example of an application was prepared by the NRC staff. The model provides the expected level of detail and content for an application to revise technical specifications regarding risk-informed justification for relocation of specific TS surveillance frequencies to a licensee controlled program change. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as NRC regulations.

**U.S. Nuclear Regulatory Commission**

Document Control Desk, Washington, DC 20555.

SUBJECT: PLANT NAME: DOCKET NO. 50— APPLICATION FOR TECHNICAL SPECIFICATION CHANGE REGARDING RISK-INFORMED JUSTIFICATION FOR THE RELOCATION OF SPECIFIC SURVEILLANCE FREQUENCY REQUIREMENTS TO A LICENSEE CONTROLLED PROGRAM

Dear Sir or Madam: In accordance with the provisions of Title 10 of the Code of Federal Regulations (10 CFR Part 50.90), "Application for Amendment of License, Construction Permit, or Early Site Permit," [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify [LICENSEE] technical specifications by relocating specific surveillance frequencies to a licensee-controlled program with the implementation of Nuclear Energy Institute (NEI) 04–10, "Risk-Informed Technical Specification Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies."

Attachment 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides documentation of PRA technical adequacy. Attachment 3 provides the existing TS pages marked up to show the proposed change. Attachment 4 provides revised (clean) TS pages. Attachment 5 provides the proposed TS Bases changes. Attachment 6 Proposed No Significant Hazards Consideration.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, "Notice for Public Comment; State Consultation," a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare [or certify, verify, state] under penalty of perjury that the foregoing is correct and true. Executed on [Date] [Signature]

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,

[Name, Title]

Attachments:

1. Description and Assessment
2. Documentation of PRA Technical Adequacy
3. Proposed Technical Specification Changes
4. Revised Technical Specification Pages
5. Proposed Technical Specification Bases Changes
6. Proposed No Significant Hazards Consideration

cc: U.S. Nuclear Regulatory Commission, Regional Office, NRC Resident Inspector.

**Attachment 1—Description and Assessment**

*1.0 Description*

The proposed amendment would modify technical specifications by relocating specific surveillance frequencies to a licensee-controlled program with the adoption of Technical Specification Task Force (TSTF)–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—Risk Informed Technical Specification Task Force (RITSTF) Initiative 5." Additionally, the change would add a new program, the Surveillance Frequency Control Program, to TS Section [5], Administrative Controls.

The changes are consistent with NRC approved Industry/TSTF STS change TSTF–425, Revision 3, (Rev. 3) (ADAMS Accession No. ML080280275). The **Federal Register** notice published on [Date] announced the availability of this TS improvement.

*2.0 Assessment*

2.1 Applicability of Published Safety Evaluation

[Licensee] has reviewed the safety evaluation dated [Date]. This review included a review of the NRC staff's evaluation, TSTF–425, Revision 3, and the requirements specified in NEI 04–10, Rev. 1, (ADAMS Accession No. ML071360456).

Attachment 2 includes [Licensee] documentation with regard to PRA technical adequacy consistent with the requirements of Regulatory Guide 1.200, Revision 1 (ADAMS Accession No. ML070240001), Section 4.2, and describes any PRA models without NRC-endorsed standards, including documentation of the quality characteristics of those models in accordance with Regulatory Guide 1.200.

[Licensee] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [Plant, Unit Nos.] and justify this amendment to incorporate the changes to the [Plant] TS.

2.2 Optional Changes and Variations

[Licensee] is not proposing any variations or deviations from the STS changes described in TSTF–425, Rev. 3, and the NRC staff's model safety evaluation dated [Date].

[The proposed amendment is consistent with the STS changes described in TSTF–425, Revision 3, but [Licensee] proposes variations or deviations from TSTF–425, as identified below and may include differing TS Surveillance numbers].

*3.0 Regulatory Analysis*

3.1 No Significant Hazards Consideration

[Licensee] has reviewed the proposed no significant hazards consideration determination (NSHC) published in the **Federal Register** [Date]([ ] FR [ ]). [Licensee] has concluded that the proposed NSHC presented in the **Federal Register** notice is applicable to [Plant Name, Unit Nos.] and is provided as an attachment to this amendment request which satisfies the requirements of 10 CFR 50.91(a).

**Attachment 2—Documentation of PRA Technical Adequacy**

**Attachment 3—Proposed Technical Specification Changes (Mark-Up)**

**Attachment 4—Proposed Technical Specification Pages**

**Attachment 5—Proposed Changes to Technical Specification Bases Pages**

**Attachment 6—Proposed No Significant Hazards Consideration**

*Description of Amendment Request:* The change requests the adoption of an approved change to the standard technical specifications (STS) for [Babcock and Wilcox (B&W) Plants (NUREG–1430), Westinghouse Plants (NUREG–1431), Combustion Engineering Plants (NUREG–1432), General Electric Plants, BWR/4 (NUREG–1433), and General Electric Plants, BWR/6 (NUREG–1334)], to allow relocation of specific TS surveillance frequencies to a licensee-controlled program. The proposed change is

described in Technical Specification Task Force (TSTF) Traveler, TSTF–425, Revision 3 (Rev. 3) (ADAMS Accession No. ML080280275) related to the Relocation of Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b and was described in the Notice of Availability published in the **Federal Register** on [Date] ([xx FR xxxxx]).

The proposed changes are consistent with NRC-approved Industry/Technical Specification Task Force (TSTF) Traveler, TSTF–425, Rev. 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b." The proposed change relocates surveillance frequencies to a licensee-controlled program, the SFCP. This change is applicable to licensees using probabilistic risk guidelines contained in NRC-approved NEI 04–10, "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies," (ADAMS Accession No. 071360456).

Basis for proposed no significant hazards consideration: As required by 10 CFR 50.91(a), the [Licensee] analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

*Response:* No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

*Response:* No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

*Response:* No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the final safety analysis report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, [Licensee] will perform a probabilistic risk evaluation using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above, licensee concludes that the requested change does not involve a significant hazards consideration as set forth in 10 CFR 50.92(c), Issuance of Amendment.

**Proposed Safety Evaluation**

**U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation**

**Technical Specification Task Force (TSTF) Change TSTF–425; Relocate Surveillance Frequencies to Licensee Control**

*1.0 Introduction*

By letter dated [____, 20__], [Licensee] (the licensee) proposed changes to the technical specifications (TS) for [Plant Name]. The requested change is the adoption of NRC-approved TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b" (Reference 1). When implemented, TSTF–425, Revision 3 (Rev. 3) relocates most periodic frequencies of technical specification (TS) surveillances to a licensee controlled program, the SFCP, and provides requirements for the new program in the administrative controls section of TS. All surveillance frequencies can be relocated except:

- Frequencies that reference other approved programs for the specific interval (such as the Inservice Testing Program or the Primary Containment Leakage Rate Testing Program),
- Frequencies that are purely event-driven (*e.g.*, "Each time the control rod is withdrawn to the 'full out' position").
- Frequencies that are event-driven but have a time component for performing the surveillance on a one-time basis once the event occurs (*e.g.*, "within 24 hours after thermal power reaching ≥95% RTP").
- Frequencies that are related to specific conditions (*e.g.*, battery degradation, age and capacity) or conditions for the performance of a surveillance requirement (*e.g.*, "drywell to suppression chamber differential pressure decrease").

[The definition of "Staggered Test Basis" in TS Section 1.1, "Definitions," is deleted. [Licensee] adopts TSTF–425, Rev. 3, and no longer uses this defined term in the technical specifications and proposes removing it from Section 1.1.] A new Administrative Controls Program is added to TS section 5 as [Specification 5.5.15 (NUREG–1433 and -1434) or Specification 5.5.18 (NUREG–1430, 1431, and 1432)]. The new program is called the SFCP and describes the requirements for the program to control changes to the relocated surveillance frequencies. The TS Bases for each affected surveillance are revised to state that the frequency is set in accordance with the Surveillance Frequency Control Program. [Various editorial changes have been made to the Bases to facilitate the addition of the Bases changes.] Some surveillance Bases do not contain a discussion of the frequency. In these cases, Bases describing the current frequency were added to maintain consistency with the Bases for similar surveillances. These instances are noted in the markup along with the source of the text. The proposed licensee changes to the administrative controls of TS to incorporate the SFCP include a specific reference to NEI 04–10, "Risk-Informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies," Revision 1 (Rev. 1) (Reference 2) as the basis for making any changes to the surveillance frequencies once they are relocated out of TS.

In a letter dated September 19, 2007, the NRC staff approved Nuclear Energy Institute (NEI) Topical Report (TR) 04–10, Rev. 1, "Risk-Informed Technical Specification initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies" (ADAMS Accession No. 072570267), as acceptable for referencing in licensing actions to the extent specified and under the limitations delineated in NEI

04–10, Rev. 1, and the final acceptance SE providing the basis for NRC acceptance of NEI 04–10, Rev 1.

*2.0 Regulatory Evaluation*

In the "Final Policy Statement: Technical Specifications for Nuclear Power Plants" published in the **Federal Register** (FR) (58 FR 39132, 7/22/93) the NRC addressed the use of Probabilistic Safety Analysis (PSA, currently referred to as Probabilistic Risk Analysis or PRA) in STS. In this 1993 FR publication, the NRC states, in part:

"The Commission believes that it would be inappropriate at this time to allow requirements which meet one or more of the first three criteria [of 10 CFR 50.36] to be deleted from technical specifications based solely on PSA (Criterion 4). However, if the results of PSA indicate that technical specifications can be relaxed or removed, a deterministic review will be performed."

"The Commission Policy in this regard is consistent with its Policy Statement on 'Safety Goals for the operation of Nuclear Power Plants,' 51 FR 30028, published on August 21, 1986. The Policy Statement on Safety Goals states in part, probabilistic results should also be reasonably balanced and supported through use of deterministic arguments. In this way, judgments can be made about the degree of confidence to be given these [probabilistic] estimates and assumptions. This is a key part of the process for determining the degree of regulatory conservatism that may be warranted for particular decisions. This 'defense-in-depth' approach is expected to continue to ensure the protection of public health and safety."

"The Commission will continue to use PSA, consistent with its policy on Safety Goals, as a tool in evaluating specific line-item improvements to Technical Specifications, new requirements, and industry proposals for risk-based Technical Specification changes."

Approximately two years later the NRC provided additional detail concerning the use of PRA in the "Final Policy Statement: Use of Probabilistic Risk Assessment in Nuclear Regulatory Activities" published in the **Federal Register** (60 FR 42622, August 16, 1995) the NRC addressed the use of Probabilistic Risk Assessment. In this FR publication, the NRC states, in part:

"The Commission believes that an overall policy on the use of PRA methods in nuclear regulatory activities should be established so that the many potential applications of PRA can be implemented in a consistent and predictable manner that would promote regulatory stability and efficiency. In addition, the Commission believes that the use of PRA technology in NRC regulatory activities should be increased to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach."

"PRA addresses a broad spectrum of initiating events by assessing the event frequency. Mitigating system reliability is then assessed, including the potential for multiple and common-cause failures. The treatment, therefore, goes beyond the single failure requirements in the deterministic approach. The probabilistic approach to regulation is, therefore, considered an extension and enhancement of traditional regulation by considering risk in a more coherent and complete manner."

"Therefore, the Commission believes that an overall policy on the use of PRA in nuclear regulatory activities should be established so that the many potential applications of PRA can be implemented in a consistent and predictable manner that promotes regulatory stability and efficiency. This policy statement sets forth the Commission's intention to encourage the use of PRA and to expand the scope of PRA applications in all nuclear regulatory matters to the extent supported by the state-of-the-art in terms of methods and data."

"Therefore, the Commission adopts the following policy statement regarding the expanded NRC use of PRA:

(1) The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy.

(2) PRA and associated analyses (e.g., sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters, where practical within the bounds of the state-of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements, regulatory guides, license commitments, and staff practices. Where appropriate, PRA should be used to support the proposal for additional regulatory requirements in accordance with 10 CFR 50.109 (Backfit Rule). Appropriate procedures for including PRA in the process should be developed and followed. It is, of course, understood that the intent of this policy is that existing rules and regulations shall be complied with unless these rules and regulations are revised.

(3) PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

(4) The Commission's safety goals for nuclear power plants and subsidiary numerical objectives are to be used with appropriate consideration of uncertainties in making regulatory judgments on the need for proposing and backfitting new generic requirements on nuclear power plant licensees."

In 10 CFR 50.36, the NRC established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation; (3) surveillance requirements; (4) design features; and (5) administrative controls. As stated in 10 CFR 50.36(c)(3), "Surveillance requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met." These categories will remain in TS. The new TS SFCP provides the necessary administrative controls to require that surveillances relocated to the SFCP are conducted at a frequency to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met. Changes to surveillance frequencies in the SFCP are made using the methodology contained in NEI 04–10, Rev. 1, including qualitative considerations, results of risk analyses, sensitivity studies and any bounding analyses, and recommended monitoring of SSCs, and required to be documented. Furthermore, changes to frequencies are subject to regulatory review and oversight of the SFCP implementation through the rigorous NRC review of safety related SSC performance provided by the reactor oversight program (ROP).

[licensee] SFCP ensures that surveillance requirements specified in the TS are performed at intervals sufficient to assure the above regulatory requirements are met. Existing regulatory requirements, such as 10 CFR 50.65, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," and 10 CFR 50 Appendix B (corrective action program), require licensee monitoring of surveillance test failures and implementing corrective actions to address such failures. One of these actions may be to consider increasing the frequency at which a surveillance test is performed. In addition, the SFCP implementation guidance in NEI 04–10, Rev. 1, requires monitoring of the performance of structures, systems, and components (SSCs) for which surveillance frequencies are decreased to assure reduced testing does not adversely impact the SSCs.

This change is analogous with other NRC-approved TS changes in which the surveillance requirements are retained in technical specifications but the related surveillance frequencies are relocated to licensee-controlled documents, such as surveillances performed in accordance with the In-Service Testing Program and the Primary Containment Leakage Rate Testing Program. Thus, this proposed change complies with 10 CFR 50.36(c)(3) by retaining the

requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met and meets the first key safety principle articulated in Regulatory Guide (RG) 1.177 (Reference 3) for plant-specific, risk-informed TS changes by complying with current regulations.

Licensees are required by TS to perform surveillance test, calibration, or inspection on specific safety-related system equipment such as reactivity control, power distribution, electrical, instrumentation, and others to verify system operability. Surveillance frequencies, currently identified in TS, are based primarily upon deterministic methods such as engineering judgment, operating experience, and manufacturer's recommendations. The licensee's use of NRC-approved PRA methodologies identified in NEI 04–10, Rev. 1, provides a way to establish risk-informed surveillance frequencies that complement the deterministic approach and support the NRC's traditional defense-in-depth philosophy.

These regulatory requirements, and the monitoring required by NEI 04–10, Rev. 1, ensure that surveillance frequencies are sufficient to assure that the requirements of 10 CFR 50.36 are satisfied and that any performance deficiencies will be identified and appropriate corrective actions taken.

*3.0 Technical Evaluation*

[LICENSEE] adoption of TSTF–425, Rev. 3, provides for administrative relocation of applicable surveillance frequencies, and provides for the addition of the SFCP to the administrative controls of TS. TSTF–425, Rev. 3, also requires the application of NEI 04–10, Rev. 1, for any changes to surveillance frequencies within the SFCP. The licensee's application for the changes proposed in TSTF–425, Rev. 3, included documentation regarding the probabilistic risk assessment (PRA) technical adequacy consistent with the requirements of Regulatory Guide 1.200 (RG–1.200) (Reference 4), "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities", Section 4.2. In accordance with NEI 04–10, Rev. 1, probabilistic risk assessment (PRA) methods are used, in combination with plant performance data and other considerations, to identify and justify modifications to the surveillance frequencies of equipment at nuclear power plants. This is in accordance with guidance provided in RG 1.174 (Reference 5) and RG 1.177 in support of changes to surveillance test intervals.

RG 1.177 identifies five key safety principles required for risk-informed changes to TS. Each of these principles is addressed by the industry methodology document, NEI 04–10, Rev. 1. The second through the fifth principles, which relate to the technical aspects of the proposed change, are discussed below in Sections 3.1 through 3.4. The first principle requires the proposed change to meet the current regulations. The staff finds that the change meets that requirement.

*3.1 The Proposed Change Is Consistent With the Defense-in-Depth Philosophy*

Consistency with the defense-in-depth philosophy, the second key safety principle of RG 1.177, is maintained if:

- A reasonable balance is preserved among prevention of core damage; prevention of containment failure, and consequence mitigation.
- Over-reliance on programmatic activities to compensate for weaknesses in plant design is avoided.
- System redundancy, independence, and diversity are preserved commensurate with the expected frequency, consequences of challenges to the system, and uncertainties (*e.g.*, no risk outliers). Because the scope of the proposed methodology is limited to revision of surveillance frequencies, the redundancy, independence, and diversity of plant systems are not impacted.
- Defenses against potential common cause failures are preserved, and the potential for the introduction of new common cause failure mechanisms is assessed.
- Independence of barriers is not degraded.
- Defenses against human errors are preserved.
- The intent of the General Design Criteria in 10 CFR Part 50, Appendix A, is maintained.

TSTF–425, Rev. 3, requires the application of NEI 04–10, Rev. 1, for any changes to surveillance frequencies within the SFCP. NEI 04–10, Rev. 1, uses both the core damage frequency (CDF) and the large early release frequency (LERF) metrics to evaluate the impact of proposed changes to surveillance frequencies. The guidance of RG 1.174 and RG 1.177 for changes to CDF and LERF is achieved by evaluation using a comprehensive risk analysis, which assesses the impact of proposed changes including contributions from human errors and common cause failures. Defense-in-depth is also included in the methodology explicitly as a qualitative consideration outside of the risk analysis, as is the potential impact on detection of component degradation that could lead to increased likelihood of common cause failures. Both the quantitative risk analysis and the qualitative considerations assure a reasonable balance of defense-in-depth is maintained to ensure protection of public health and safety, satisfying the second key safety principle of RG 1.177.

*3.2 The Proposed Change Maintains Sufficient Safety Margins*

The engineering evaluation that will be conducted by the licensee under the Surveillance Frequency Control Program when Frequencies are revised will assess the impact of the proposed Frequency change with the principle that sufficient safety margins are maintained. The guidelines used for making that assessment will include ensuring the proposed Surveillance test frequency change is not in conflict with approved industry codes and standards or adversely affects any assumptions or inputs to the safety analysis, or, if such inputs are affected, justification is provided to ensure sufficient safety margin will continue to exist.

The design, operation, testing methods, and acceptance criteria for SSCs, specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the [Updated] Final Safety Analysis Report and bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis.

Thus, safety margins are maintained by the proposed methodology, and the third key safety principle of RG 1.177 is satisfied.

*3.3 When Proposed Changes Result in an Increase in Core Damage Frequency or Risk, the Increases Should Be Small and Consistent With the Intent of the Commission's Safety Goal Policy Statement*

RG 1.177 provides a framework for risk evaluation of proposed changes to surveillance frequencies, which requires identification of the risk contribution from impacted surveillances, determination of the risk impact from the change to the proposed surveillance frequency, and performance of sensitivity and uncertainty evaluations. TSTF–425, Rev. 3, requires application of NEI 04–10, Rev. 1, in the SFCP. NEI 04–10, Rev. 1, satisfies the intent of RG 1.177 requirements for evaluation of the

change in risk, and for assuring that such changes are small by providing the technical methodology to support risk informed technical specifications for control of surveillance frequencies.

*3.4.1 Quality of the PRA*

The quality of the [Licensee] PRA is compatible with the safety implications of the proposed TS change and the role the PRA plays in justifying the change. That is, the more the potential change in risk or the greater the uncertainty in that risk from the requested TS change, or both, the more rigor that must go into ensuring the quality of the PRA.

[Licensee] used RG 1.200 to address the plant PRA technical adequacy. RG 1.200 is NRC developed regulatory guidance, which addresses the use of the American Society of Mechanical Engineers (ASME) RA–Sb–2005, Addenda to ASME RA–S–2002 Standard for Probabilistic Risk Assessment for Nuclear Power Plant Applications (Reference 6), NEI 00–02, PRA Peer Review Process guidelines (Reference 7) and NEI 05–04, Process for Performing Follow-On PRA Peer Reviews Using the ASME PRA Standard (Reference 8). The licensee has performed an assessment of the PRA models used to support the SFCP against the requirements of RG 1.200 to assure that the PRA models are capable of determining the change in risk due to changes to surveillance frequencies of SSCs, using plant specific data and models. Capability category II of ASME RA–Sb–2005 is applied as the standard, and any identified deficiencies to those requirements are assessed further in sensitivity studies to determine any impacts to proposed decreases to surveillance frequencies. This level of PRA quality, combined with the proposed sensitivity studies, is sufficient to support the evaluation of changes proposed to surveillance frequencies within the SFCP, and is consistent with regulatory position 2.3.1 of RG 1.177.

*3.4.2 Scope of the PRA*

[Licensee] is required to evaluate each proposed change to a relocated surveillance frequency using the guidance contained in NEI 04–10, Rev. 1, to determine its potential impact on risk, due to impacts from internal events, fires, seismic, other external events, and from shutdown conditions. Consideration is made of both CDF and LERF metrics. In cases where a PRA of sufficient scope or where quantitative risk models were unavailable, [Licensee] uses bounding analyses, or other conservative quantitative evaluations. A qualitative screening analysis may be used when the surveillance frequency impact on plant risk is shown to be negligible or zero. The licensee's evaluation methodology is sufficient to ensure the scope of the risk contribution of each surveillance frequency change is properly identified for evaluation, and is consistent with regulatory position 2.3.2 of RG 1.177.

*3.4.3 PRA Modeling*

The [Licensee] will determine whether the SSCs affected by a proposed change to a surveillance frequency are modeled in the PRA. Where the SSC is directly or implicitly modeled, a quantitative evaluation of the risk impact may be carried out. The methodology adjusts the failure probability of the impacted SSCs, including any impacted common cause failure modes, based on the proposed change to the surveillance frequency. Where the SSC is not modeled in the PRA, bounding analyses are performed to characterize the impact of the proposed change to surveillance frequency. Potential impacts on the risk analyses due to screening criteria and truncation levels are addressed by the requirements for PRA technical adequacy consistent with guidance contained in RG 1.200, and by sensitivity studies identified in NEI 04–10, Rev. 1.

The licensee will perform quantitative evaluations of the impact of selected testing strategy (*i.e.*, staggered testing or sequential testing) consistently with the guidance of NUREG/CR–6141 and NUREG/CR–5497, as discussed in NEI 04–10 Rev. 1.

Thus, through the application of NEI 04–10, Rev. 1, the [Licensee] PRA modeling is sufficient to ensure an acceptable evaluation of risk for the proposed changes in surveillance frequency, and is consistent with regulatory position 2.3.3 of RG 1.177.

*3.4.4 Assumptions for Time Related Failure Contributions*

The failure probabilities of SSCs modeled in the [licensee] PRA [include] a standby time-related contribution and a cyclic demand-related contribution. NEI 04–10, Rev. 1, criteria adjust the time-related failure contribution of SSCs affected by the proposed change to surveillance frequency. This is consistent with RG 1.177 Section 2.3.3 which permits separation of the failure rate contributions into demand and standby for evaluation of surveillance requirements. If the available data do not support distinguishing between the time-related failures and demand failures, then the change to surveillance frequency is conservatively assumed to impact the total failure probability of the SSC, including both standby and demand contributions. The SSC failure rate (per unit time) is assumed to be unaffected by the change in test frequency, and will be confirmed by the required monitoring and feedback implemented after the change in surveillance frequency is implemented. The process requires consideration of qualitative sources of information with regards to potential impacts of test frequency on SSC performance, including industry and plant-specific operating experience, vendor recommendations, industry standards, and code-specified test intervals. Thus the process is not reliant upon risk analyses as the sole basis for the proposed changes.

The potential beneficial risk impacts of reduced surveillance frequency, including reduced downtime, lesser potential for restoration errors, reduction of potential for test caused transients, and reduced test-caused wear of equipment, are identified qualitatively, but are conservatively not required to be quantitatively assessed. Thus, through the application of NEI 04–10, Rev. 1, [Licensee] has employed reasonable assumptions with regard to extensions of surveillance test intervals, and is consistent with regulatory position 2.3.4 of RG 1.177.

*3.4.5 Sensitivity and Uncertainty Analyses*

NEI 04–10, Rev. 1, requires sensitivity studies to assess the impact of uncertainties from key assumptions of the PRA, uncertainty in the failure probabilities of the affected SSCs, impact to the frequency of initiating events, and of any identified deviations from capability Category II of ASME PRA Standard (ASME RA–Sb–2005) (Reference 4). Where the sensitivity analyses identify a potential impact on the proposed change, revised surveillance frequencies are considered, along with any qualitative considerations that may bear on the results of such sensitivity studies. Required monitoring and feedback of SSC performance once the revised surveillance frequencies are implemented will also be performed. Thus, through the application of NEI 04–10, Rev. 1, [Licensee] has appropriately considered the possible impact of PRA model uncertainty and sensitivity to key assumptions and model limitations, consistently with regulatory position 2.3.5 of RG 1.177.

*3.4.6 Acceptance Guidelines*

[Licensee] will quantitatively evaluate the change in total risk (including

internal and external events contributions) in terms of core damage frequency (CDF) and large early release frequency (LERF) for both the individual risk impact of a proposed change in surveillance frequency and the cumulative impact from all individual changes to surveillance frequencies using the guidance contained in NRC approved NEI 04–10, Rev. 1 in accordance with the TS SFCP. Each individual change to surveillance frequency must show a risk impact below 1E–6 per year for change to CDF, and below 1E–7 per year for change to LERF. These are consistent with the limits of RG 1.174 for very small changes in risk. Where the RG 1.174 limits are not met, the process either considers revised surveillance frequencies which are consistent with RG 1.174, or the process terminates without permitting the proposed changes. Where quantitative results are unavailable to permit comparison to acceptance guidelines, appropriate qualitative analyses are required to demonstrate that the associated risk impact of a proposed change to surveillance frequency is negligible or zero. Otherwise, bounding quantitative analyses are required which demonstrate the risk impact is at least one order of magnitude lower than the RG 1.174 acceptance guidelines for very small changes in risk. In addition to assessing each individual SSC surveillance frequency change, the cumulative impact of all changes must result in a risk impact below 1E–5 per year for change to CDF, and below 1E–6 per year for change to LERF, and the total CDF and total LERF must be reasonably shown to be less than 1E–4 per year and 1E–5 per year, respectively. These are consistent with the limits of RG 1.174 for acceptable changes in risk, as referenced by RG 1.177 for changes to surveillance frequencies. The staff interprets this assessment of cumulative risk as a requirement to calculate the change in risk from a baseline model utilizing failure probabilities based on the surveillance frequencies prior to implementation of the SFCP, compared to a revised model with failure probabilities based on changed surveillance frequencies. The staff further notes that [Licensee] includes a provision to exclude the contribution to cumulative risk from individual changes to surveillance frequencies associated with small risk increases (less than 5E–8 CDF and 5E–9 LERF) once the baseline PRA models are updated to include the effects of the revised surveillance frequencies.

The quantitative acceptance guidance of RG 1.174 is supplemented by qualitative information to evaluate the proposed changes to surveillance frequencies, including industry and plant-specific operating experience, vendor recommendations, industry standards, the results of sensitivity studies, and SSC performance data and test history.

The final acceptability of the proposed change is based on all of these considerations and not solely on the PRA results compared to numerical acceptance guidelines. Post implementation performance monitoring and feedback are also required to assure continued reliability of the components. The licensee's application of NEI 04–10, Rev. 1, provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies, consistent with Regulatory Position 2.4 of RG 1.177. Therefore, the proposed [Licensee] methodology satisfies the fourth key safety principle of RG 1.177 by assuring any increase in risk is small consistent with the intent of the Commission's Safety Goal Policy Statement.

*3.4.7 The Impact of the Proposed Change Should Be Monitored Using Performance Measurement Strategies*

[LICENSEE] adoption of TSTF–425, Rev. 3, requires application of NEI 04–10, Rev. 1, in the SFCP. NEI 04–10, Rev. 1, requires performance monitoring of SSCs whose surveillance frequency has been revised as part of a feedback process to assure that the change in test frequency has not resulted in degradation of equipment performance and operational safety. The monitoring and feedback includes consideration of maintenance rule monitoring of equipment performance. In the event of degradation of SSC performance, the surveillance frequency will be reassessed in accordance with the methodology, in addition to any corrective actions which may apply as part of the maintenance rule requirements. The performance monitoring and feedback specified in NEI 04–10, Rev. 1, is sufficient to reasonably assure acceptable SSC performance and is consistent with regulatory position 3.2 of RG 1.177. Thus, the fifth key safety principle of RG 1.177 is satisfied.

*3.4.8 Addition of Surveillance Frequency Control Program to TS Section 5*

[Licensee] has included the SFCP and specific requirements into TS Section [5.5.15 or 5.5.18], administrative controls, as follows:

This program provides controls for surveillance frequencies. The program ensures that surveillance requirements specified in the technical specifications are performed at intervals (frequencies) sufficient to assure that the associated limiting conditions for operation are met.

a. The Surveillance Frequency Control Program contains a list of frequencies of those surveillance requirements for which the frequency is controlled by the program.

b. Changes to the frequencies listed in the Surveillance Frequency Control Program shall be made in accordance with NEI 04–10, "Risk-Informed Method for Control of Surveillance Frequencies," Revision 1.

c. The provisions of surveillance requirements 3.0.2 and 3.0.3 are applicable to the frequencies established in the Surveillance Frequency Control Program.

**Summary and Conclusions**

The staff has reviewed the [Licensee] proposed relocation of some surveillance frequencies to a licensee controlled document, and controlling changes to surveillance frequencies in accordance with a new program, the SFCP, identified in the administrative controls of TS. The SFCP and TS Section [5.5.15, 5.5.18] references NEI 04–10, Rev. 1, which provides a risk-informed methodology using plant-specific risk insights and performance data to revise surveillance frequencies within the SFCP. This methodology supports relocating surveillance frequencies from TS to a licensee-controlled document, provided those frequencies are changed in accordance with NEI 04–10, Rev. 1, which is specified in the administrative controls of the TS.

The proposed [Licensee] adoption of TSTF–425, Rev. 3, and risk-informed methodology of NEI 04–10, Rev. 1, as referenced in the administrative controls of TS, satisfies the key principles of risk-informed decision making applied to changes to TS as delineated in RG 1.177 and RG 1.174, in that:

- The proposed change meets current regulations;
- The proposed change is consistent with defense-in-depth philosophy;
- The proposed change maintains sufficient safety margins;
- Increases in risk resulting from the proposed change are small and consistent with the Commission's Safety Goal Policy Statement; and

• The impact of the proposed change is monitored with performance measurement strategies.

10 CFR 50.36(c)(3) states "Technical specifications will include items in the following categories: Surveillance Requirements. Surveillance Requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met." The NRC staff finds that with the proposed relocation of surveillance frequencies to an owner-controlled document and administratively controlled in accordance with the TS SFCP, [Licensee] continues to meet the regulatory requirement of 10 CFR 50.36, and specifically, 10 CFR 50.36(c)(3), surveillance requirements.

The NRC has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the NRC's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

*4.0 State Consultation*

In accordance with the NRC's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

*5.0 Environmental Consideration*

The amendment[s] change[s] a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 or surveillance requirements. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The NRC has previously issued a proposed finding that the amendment involves no significant hazards consideration and there has been no public comment on such finding published [DATE] ([ ] FR [ ]). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) and c(10). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

*6.0 References*


1. TSTF–425, Revision 3, "Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b," March 18, 2009 (ADAMS Accession Number: ML090850642).
2. NEI 04–10, Revision 1, "Risk-Informed Technical Specifications Initiative 5B, Risk-Informed Method for Control of Surveillance Frequencies," April 2007 (ADAMS Accession Number: ML071360456).
3. Regulatory Guide 1.177, "An Approach for Plant-Specific, Risk-Informed Decision-making: Technical Specifications," August 1998 (ADAMS Accession Number: ML003740176).
4. Regulatory Guide 1.200, Rev. 1 "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," Revision 1, January 2007 (ADAMS Accession Number: ML070240001).
5. Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," NRC, August 1998 (ADAMS Accession Number: ML003740133).
6. ASME PRA Standard ASME RA–Sb–2005, Addenda to ASME RA–S–2002, "Standard for Probabilistic Risk Assessment for Nuclear Power Plant Application."
7. NEI 00–02, Rev. 1 "Probabilistic Risk Assessment (PRA) Peer Review Process Guidance, Rev. 1, May 2006 (ADAMS Accession Number: ML061510621).
8. NEI 05–04, "Process for Performing Follow-On PRA Peer Reviews Using the ASME PRA Standard", Rev. 0, August 2006.


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## SMALL BUSINESS ADMINISTRATION

### Dealer Floor Plan Pilot Initiative

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice and request for comments.

**SUMMARY:** SBA is introducing a guaranty loan pilot initiative to make available 7(a) loan guaranties for lines of credit that provide floor plan financing to support that sector of the Nation's retail community that traditionally requires floor plan financing in order to acquire titleable inventory. SBA is creating this pilot initiative to help address the significant decline in the number of lenders that have provided the majority of this type of financing in recent years. In the automobile industry, this often included affiliates of the manufacturers themselves. Under the Dealer Floor Plan Pilot Initiative, which will be available through September 30, 2010, SBA will guarantee up to 75 percent of a floor plan line of credit between $500,000 and $2,000,000 to eligible dealers of titleable assets, including but not limited to automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes).

**DATES:** *Effective Date:* The Dealer Floor Plan Pilot Initiative will be effective on July 1, 2009, and will remain in effect through September 30, 2010. SBA will begin accepting applications on July 1, 2009 and begin reviewing and approving applications the week of July 6, 2009.

*Comment Date:* Comments must be received on or before August 5, 2009.

**ADDRESSES:** You may submit comments, identified by SBA docket number SBA–2009–0009 by any of the following methods:

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

• *Mail:* Dealer Floor Plan Pilot Initiative Comments—Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416.

• *Hand Delivery/Courier:* Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to *dealerfloorplancomments@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Sloan Coleman, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (202) 205–7737; *w.coleman@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

**1. Background Information**

America's financial crisis has created adverse conditions that are affecting small businesses, including reduced liquidity in the lending system, a reluctance of many lenders to extend new loans, tightened credit standards and weaker finances at small businesses. This has been especially true in the area of the financing of dealer floor plans for automobiles, motorcycles, boats, recreational vehicles and similar titled vehicles. In the case of the estimated $100 billion in auto floor plan lending, for example, the big three U.S. auto manufacturers, which previously provided roughly one-third of the lending, have stopped accepting new requests for floor plan financing. Banks are not able to meet the remaining financing needs and four major lenders representing approximately $2 billion of the market have recently issued 90–120 day closing notices to their dealers with existing financing. The National Automobile Dealers Association (NADA) estimates that 30% of its membership (or approximately 5,000 dealers) have inventories less than $2 million and could thus be potential beneficiaries of a new SBA offering.

In addition, these retailers have been especially hard hit by the recent financial difficulties of several manufacturers coupled with a fall off in sales and longer cycle times for their inventory turnover. When the shortage of available financing is coupled with the decline in sales, even relatively strong dealers who could normally weather the current recession are facing challenges. This, in turn, has a serious deleterious affect on local communities as these dealers are often critical contributors to local economies and civic institutions.

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (the "Recovery Act") (Pub. L. 111–5, 123 Stat. 115) to promote economic recovery by preserving and creating jobs, and to assist those most affected by the severe economic conditions facing the nation. The SBA received funding and authority through the Recovery Act to modify existing loan programs and establish new loan programs to significantly stimulate small business lending.

Current SBA regulations and policy prohibit dealer floor plan financing; however, it is not statutorily prohibited. In the early history of SBA lending, the Agency had a role in the underwriting and servicing of most, if not all, of its loan portfolio. The Agency historically did not make or guarantee floor plan financing arrangements because such credit was deemed to be widely available from conventional sources and because the Agency did not have the capabilities to maintain servicing for such lines of credit in the event it was called upon to service the loan.

With requirements now in place for the lender to perform most servicing functions, even after a default and guaranty purchase, and because there is evidence that there are a diminishing number of lenders willing to provide floor plan financing to smaller dealers, the historic reasons for the restrictions against floor plan financing have become less of a concern, particularly in the current economic climate. In addition, SBA believes that in this recession it is appropriate to ensure that guaranties are available for the widest possible types of small business financial assistance, including the guaranty of floor plan lines of credit, while maintaining risk within prudent levels.

The SBA has always been able to guarantee loans made to eligible small businesses that utilize floor plan financing in order to help them acquire or repair their facility, purchase machinery and equipment used in their operation, or provide working capital. Dealers needing floor plan financing had to obtain it separately without SBA support. By adding the ability to guarantee floor plan lines through this pilot program, SBA will enable its lending partners to be in a better position to offer a full array of financing to those businesses that need such financing arrangements during the current economic environment.

This pilot initiative is intended to complement the provisions of the Recovery Act and is, therefore, set to expire on September 30, 2010. When the initial pilot phase is concluded, SBA will evaluate the initiative to determine if the pilot will be extended, certain aspects made a permanent part of SBA's lending programs, or terminated. A key determinate in that review will be the extent to which floor plan financing is available from the private market, and whether there is a sufficient need for further government support.

Loans approved under this pilot initiative will qualify for the borrower fee eliminations implemented on March 16, 2009 under the temporary authority provided in section 501 of the Recovery Act, while funds for fee eliminations are available. Funds available for fee relief under the Recovery Act may be exhausted prior to the expiration date of the pilot (September 30, 2010). Loans approved under this pilot, however, will not be subject to the higher guaranty provisions of section 502 of the Recovery Act. SBA is limiting the guaranty percentage to the maximum allowed in the Small Business Act as opposed to the higher guaranty percentage allowed temporarily under the Recovery Act in part to ensure that the data collected during the pilot phase provides a meaningful basis for which to determine if the pilot should be extended, made a permanent part of SBA's lending programs, or terminated. In addition, SBA is limiting the maximum guaranty percentage to 75 percent so that the pilot will be neutral from a credit subsidy standpoint and therefore not require an additional appropriation of subsidy cost, as required under the Federal Credit Reform Act (2 U.S.C. 661–661f).

**2. Comments**

The intent of the Dealer Floor Plan Pilot Initiative is to complement SBA's other efforts under the Recovery Act to ensure credit is available to America's small businesses. Although the pilot initiative and this Notice are effective immediately, comments are solicited from interested members of the public on all aspects of the Notice including the formal guidance set forth in the section below. These comments must be submitted on or before August 5, 2009. The SBA will consider these comments and the need for making any revisions as a result of these comments.

**3. Dealer Floor Plan Pilot Initiative**

*Overview*

Under the Dealer Floor Plan Pilot Initiative, SBA is implementing a 7(a) loan guaranty product targeted to retail dealers of titleable assets, including but not limited to automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes).

*Eligibility*

In addition to standard 7(a) eligibility requirements, the eligibility of applicants for a floor plan line of credit guaranteed under the Dealer Floor Plan Pilot Initiative will be limited to retail dealers of titleable inventory (both new and used) that require licensing and/or registration by a State authority after acquisition. Eligible small businesses include, but are not limited to, dealers of automobiles, motorcycles, boats (including boat trailers), recreational vehicles and manufactured housing (mobile homes).

SBA size regulations, including those pertaining to affiliation set out in 13 CFR Part 121, apply to the Dealer Floor Plan Pilot Initiative. These regulations

include the recently added alternative 7(a) size standard as published in the **Federal Register** on May 5, 2009 (74 FR 20577).

*Loan Amount, Maximum Guaranty Percentage and Maturity*

Loans under the Dealer Floor Plan Pilot Initiative will have a minimum loan amount of $500,000 and a maximum loan amount outstanding at any one time of $2,000,000.

The maximum guaranty percentage will be up to 75 percent of the outstanding loan. As noted above, the increased guaranty percentage of up to 90 percent allowed under section 502 of the Recovery Act will not be available for loans approved under this pilot initiative.

The maximum maturity on lines of credit approved under this pilot initiative will be limited to five (5) years.

*Use of Proceeds and Repayment*

Floor plan lines of credit guaranteed by SBA will be revolving lines of credit. The proceeds must be used either for the acquisition of titleable inventory for retail sales or to refinance existing floor plan lines of credit with another lender. Repayment of these lines will occur as the acquired inventory is sold. Proceeds may not be used for any other purpose, including to refinance any existing same-institution floor plan line of credit.

*Interest Rates*

The maximum interest rates for loans under the Dealer Floor Plan Pilot Initiative are the same as those allowed under SBA regulations at 13 CFR 120.213–120.214 for the 7(a) program.

*Collateral*

Collateral must include a first perfected security interest in all titleable inventory acquired with any portion of the proceeds from the SBA-guaranteed floor plan line of credit. The floor plan line of credit which SBA guarantees does not have to be the sole floor plan line. However, if more than one floor plan line exists to any one business, then the inventory supported by each line is to be separately accounted for and the sale proceeds (or at least the percentage of the sale proceeds equal to the percentage of the cost financed under the line) of any inventory acquired with any portion of the floor plan line guaranteed by SBA must be used to reduce the balance on that line. In addition, dealers with multiple floor plan lines for multiple product lines (manufacturers or new/used) with multiple floor plan creditors will be required to have appropriate delineated inter-creditor agreements to enable proper security interest perfection.

*Allowable Fees*

The SBA guaranty fee and the lender's annual servicing fee (SBA "On-Going Guaranty Fee") set forth in 13 CFR 120.220 apply to loans approved under this pilot initiative. As noted above, loans approved under the Dealer Floor Plan Pilot Initiative are eligible for the borrower fee elimination implemented under the temporary authority provided in section 501 of the Recovery Act, to the extent such appropriations for the cost of fee reductions remain available.

For loans approved under this pilot initiative, lenders may charge the borrower the same fees allowed under SBA's 7(a) loan program with the exception of the extraordinary servicing fee. For loans approved under this pilot initiative, SBA will allow lenders to charge an extraordinary servicing fee that is higher than the 2 percent allowed by Agency regulations at 13 CFR 120.221(b) provided that the fee charged is reasonable and prudent based on the level of extraordinary effort required to adequately service the floor plan line. In addition, if the lender currently provides floor plan financing to its customers, the lender may not charge higher fees for its SBA-guaranteed floor plan lines of credit than it charges for its similarly-sized, non-SBA guaranteed floor plan lines of credit. SBA's guaranty does not extend to extraordinary servicing fees and, at time of guaranty purchase, SBA will not pay any portion of such fees.

*Maximum Advance Rates*

Lenders will be allowed a maximum advance rate of 90% on new automobile inventory and 80% on all other inventory for purposes of establishing the maximum SBA guaranty. Lenders may establish an advance rate higher than this; however, the maximum SBA guaranty will be no more than 75% of 90% for new automobile inventory or 75% of 80% for all other inventory. For example, if a lender has an advance rate of 100% for all inventory, the maximum SBA guaranty will be 67.5% for new automobile inventory and 60% for all other inventory financed by the lender. The lender will need to identify the advance rate and calculate the maximum allowable guaranty percentage for each loan on the Lender's Application for Guaranty (SBA Form 4–I). (The SBA Form 4–I can be found at *http://www.sba.gov/tools/Forms/smallbusinessforms/fsforms/index.html.*)

*Secondary Market and Participating Lender Financings or Other Conveyances*

SBA loan guaranties made under this pilot initiative may not be sold under Agency regulations at 13 CFR Part 120, Subpart F—Secondary Market. In addition, SBA loan guaranties approved under this pilot initiative may not be included in any participating lender financings or other conveyances, including securitizations, participations and pledges, as described in Agency regulations at 13 CFR 120.420 through 120.435.

*Eligible Lenders*

All SBA lenders with an executed Loan Guaranty Agreement (SBA Form 750) may participate in this pilot initiative. Lenders participating in the pilot initiative must have designated personnel who are responsible for making and servicing floor plan lines of credit. In addition, if a lender has less than $15 million in floor plan lines of credit in its current portfolio or has been making floor plan lines of credit for less than 5 years ("Less Experienced Floor Plan Lenders"), the lender may only approve lines under the pilot initiative to customers with which it has a banking relationship that existed prior to the effective date of this pilot initiative and must submit all Dealer Floor Plan applications to the Standard 7(a) Loan Guaranty Processing Center (LGPC) for approval over the life of the pilot. It will be the responsibility of the lender to document the existing relationship with the borrower in the credit memorandum, which will be required to be submitted to SBA as part of any guaranty purchase request.

Lenders with existing floor plan financing operations must administer their SBA-guaranteed floor plan financing operation in conformance with the existing policies and procedures used for their similarly-sized, non-SBA guaranteed floor plan lines, including risk management policies and procedures. Lenders who have not participated in floor plan financing must develop policies and procedures specific to floor plan financing, including risk management policies and procedures.

When developing policies and procedures specific to floor plan financing, lenders may follow guidance provided by their primary Federal regulator or, if none is available, lenders may follow the guidance on floor plan financing provided by the Office of the Comptroller of the Currency (OCC) in Section 210 of its Examiner's Handbook. (The OCC Examiner's Handbook can be

found at *http://www.occ.treas.gov/handbook/floorplan1.pdf.*) At a minimum, the policies and procedures of all lenders participating in this pilot initiative must address the following: (1) The personnel who will be responsible for making and servicing floor plan loans; (2) the collateral monitoring procedures, which must include floor checks (physical inventories) conducted at least monthly and on a random surprise basis; (3) a requirement that the borrower provide to the lender copies of its monthly manufacturer's dealership financial statement (for dealers of new inventory) or monthly financial statements (for dealers of used inventory) no later than 7 days after the end of the previous month; (4) the procedures in place to ensure prompt payment on the line upon the sale of inventory; (5) all policies and procedures specific to liquidation that are unique to floor plan financing; and (6) the fees the lender will charge to service these loans. Lenders may use contracted services and/or available software programs to assist with monitoring and tracking the collateral.

*Application Forms and Authorization*

Each lender participating in the pilot initiative must submit its first application under the pilot following Standard 7(a) procedures to the LGPC. SBA will begin accepting applications under the Dealer Floor Plan Pilot Initiative on July 1, 2009 and will begin reviewing and approving the applications the week of July 6, 2009.

After the initial application submitted under the pilot initiative is approved by the LGPC, lenders may submit applications for loan guaranties under the Dealer Floor Plan Pilot Initiative through Standard 7(a), Certified Lender Program (CLP) or Preferred Lender Program (PLP) processing methods using the existing SBA forms applicable to the processing method, except for Less Experienced Floor Plan Lenders. These lenders will continue to submit their floor plan applications to the LGPC for the life of the pilot. In order to submit an application for guaranty under this pilot initiative through PLP procedures, PLP lenders must ensure that the application for a floor plan line of credit meets the requirements for delegated processing as well as the requirements specified in this Notice. SBA will issue instructions for lenders on how to complete existing SBA application forms to include floor plan lines of credit.

SBA will incorporate into the Standard 7(a) Authorization Boilerplate applicable provisions related to floor plan financing.

In addition to SBA's existing servicing and liquidation requirements as set forth in Agency regulations and Standard Operating Procedures (SOPs) 50 50 and 50 51, lenders will be required to service any floor plan line of credit guaranteed by SBA with the requirement that as any item of inventory acquired with the line is sold the proceeds from the sale (or at least the percentage of the sale proceeds equal to the percentage of the cost financed under the line) must be submitted to the lender to reduce the balance on the line pursuant to the sold inventory item. (SOPs 50 50 and 50 51 can be found at *http://www.sba.gov/tools/resourcelibrary/sops/index.html.*)

Lenders will be required to periodically report on disbursement and collection activity in addition to their 1502 reporting, to allow SBA to conform to accounting and budgeting requirements under credit reform, as well as to evaluate and monitor portfolio performance. SBA will provide further information on this additional reporting requirement in the coming weeks.

*Guaranty Purchase*

In addition to the standard purchase documentation required by SBA, with any guaranty purchase request under the pilot initiative lenders will be required to provide copies of the floor check reports and the monthly manufacturer's dealership financial statements (for dealers of new inventory) or monthly financial statements (for dealers of used inventory) for the twelve (12) months prior to default. Also, as stated above, Less Experienced Floor Plan Lenders may only approve lines under the pilot initiative to customers with which it has a banking relationship that existed prior to the effective date of this pilot initiative. It will be the responsibility of the lender to document the existing relationship with the borrower in the credit memorandum, which will be required to be submitted to SBA as part of any guaranty purchase request. Further, as part of the guaranty purchase review, SBA will review the lender's policies and procedures specific to floor plan financing and the lender's compliance with those policies and procedures. In addition to the grounds set forth in 13 CFR 120.524, the lender's failure to comply with its policies and procedures or the terms and procedures set forth in this **Federal Register** notice may result in denial of SBA's guaranty on the loan, in full or in part.

*Lender Oversight*

As part of its ongoing lender oversight activities, SBA's Office of Credit Risk Management (OCRM) will review the lender's policies and procedures specific to floor plan financing, including risk management policies and procedures, and the lender's compliance with those policies and procedures. Upon receipt of a lender's initial application under the pilot initiative, the Standard 7(a) LGPC will notify OCRM who will request a copy of the lender's policies and procedures governing floor plan financing as an initial step in its oversight of this pilot initiative. In addition, once a lender has processed 15 loans under this pilot initiative, the Office of Financial Assistance will alert OCRM to that fact for possible additional lender oversight, such as an off-site review of the lender's SBA-guaranteed floor plan portfolio and/or inclusion of the lender's floor plan loans in a targeted review or as part of the lender's next scheduled on-site review.

Pursuant to the authority provided to SBA under 13 CFR 120.3 to waive certain regulations in establishing and testing pilot loan initiatives for a limited period of time, SBA will waive the following regulations, which otherwise apply to 7(a) loans, for loans made under the Dealer Floor Plan Pilot Initiative only: (1) 13 CFR 120.130(c), which prohibits floor plan financing or other revolving lines of credit as an allowable use of proceeds, is waived so this type of financing can be guaranteed by SBA under the Dealer Floor Plan Pilot Initiative; (2) 13 CFR 120.221(b), which limits extraordinary servicing fees to 2% of the outstanding balance on an annual basis, is being waived so lenders can charge more than 2% on loans approved under this pilot initiative as long as the fees are not higher than those charged on the lender's similarly-sized, non-SBA guaranteed floor plan lines of credit and as long as the fees are reasonable and prudent based on the level of extraordinary effort required to adequately service the floor plan line; (3) 13 CFR 120.390, the regulation that covers all Revolving Credit other than EWCP loans, is waived so the Dealer Floor Plan Pilot Initiative can be carried out without having these loans classified as CAPLines loans; (4) 13 CFR Part 120, Subpart F—Secondary Market, is being waived because loans approved under the Dealer Floor Plan Pilot Initiative cannot be sold on the secondary market; and (5) 13 CFR 120.420 through 120.435 are being waived because loans approved under

the Dealer Floor Plan pilot initiative cannot be included in any participating lender financings or other conveyances, including securitizations, participations and pledges.

All other provisions of the Small Business Act applicable to the 7(a) program and the regulations promulgated thereunder that are not superseded by any provision of this Notice will continue to apply to loans made under this pilot initiative.

Lenders must use prudent lending practices in the making and servicing of SBA-guaranteed floor plan lines of credit and must comply with all SBA Loan Program Requirements that are not superseded by any provisions of this Notice.

In accordance with section 7(a)(25) of the Small Business Act (15 U.S.C. 636), loans approved under this pilot initiative are limited to not more than 10 percent of the total number of 7(a) loans approved in any fiscal year.

SBA may provide further guidance, if needed, through SBA notices published on SBA's Web site, *http://www.sba.gov*.

Questions on the Dealer Floor Plan Pilot Initiative may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at *http://www.sba.gov/localresources/index.html*.

**Authority:** 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

**Grady B. Hedgespeth,**

*Director, Office of Financial Assistance.*

[FR Doc. E9–15856 Filed 6–30–09; 4:15 pm]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11802 and #11803]**

### Missouri Disaster # MO–00038

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1847–DR), dated 06/19/2009.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 05/08/2009 through 05/16/2009.

**DATES:** *Effective Date:* 06/19/2009.

*Physical Loan Application Deadline Date:* 08/18/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/17/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/19/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Adair, Barton, Bollinger, Camden. Cape Girardeau, Cedar, Crawford, Dade, Dallas, Dent, Douglas, Greene, Grundy, Hickory, Howell, Iron, Jasper, Knox, Laclede, Lewis, Livingston, Madison, Maries, Marion, Miller, Newton, Oregon, Ozark, Perry, Phelps, Polk, Pulaski, Ray, Reynolds, Ripley, Saint Francois, Sainte Genevieve, Saline, Shannon, Shelby, Stone, Sullivan, Texas, Vernon, Washington, Wayne, Webster, Wright.

*The Interest Rates are:*

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere; | 4.500 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11802B and for economic injury is 11803B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–15817 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11796 and #11797]**

### Kentucky Disaster #KY–00026

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kentucky (FEMA–1841–DR), dated 05/29/2009.

*Incident:* Severe Storms, Tornadoes, Flooding, and Mudslides.

*Incident Period:* 05/03/2009 through 05/20/2009.

**DATES:** *Effective Date:* 05/29/2009.

*Physical Loan Application Deadline Date:* 07/28/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/01/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 05/29/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Ballard, Breathitt, Carlisle, Clay, Crittenden, Estill, Floyd, Fulton, Grayson, Hickman, Jackson, Knott, Lawrence, Lee, Leslie, Letcher, Madison, Magoffin, Marshall, Owsley, Perry, Pike, Russell, Trigg.

*The Interest Rates are:*

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11796B and for economic injury is 11797B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–15713 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11798 and #11799]**

### Kansas Disaster # KS–00034

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA—1848—DR), dated 06/24/2009.

*Incident:* Severe Winter Storm and Record and Near Record Snow.

*Incident Period:* 03/26/2009 through 03/29/2009.

**DATES:** *Effective Date:* 06/24/2009.

*Physical Loan Application Deadline Date:* 08/24/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/24/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/24/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Butler, Chase, Chautauqua, Coffey, Cowley, Dickinson, Elk, Grant, Greenwood, Harvey, Lyon, Marion, Sumner, Woodson.

*The Interest Rates are:*

| | Percent |
|---|---|
| *Other (Including Non-Profit Organizations) with Credit Available Elsewhere:* | 4.500 |
| *Businesses and Non-Profit Organizations without Credit Available Elsewhere:* | 4.000 |

The number assigned to this disaster for physical damage is 11798B and for economic injury is 11799B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–15715 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11789 and #11790]**

### Alabama Disaster Number AL–00023

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1842–DR), dated 06/19/2009

*Incident:* Severe Storms, Tornadoes, Flooding, and Straight-line Winds.

*Incident Period:* 05/06/2009 through 05/08/2009.

**DATES:** *Effective Date:* 06/25/2009.

*Physical Loan Application Deadline Date:* 08/18/2009.

*EIDL Loan Application Deadline Date:* 03/19/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of ALABAMA, dated 06/19/2009 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:*

(Physical Damage and Economic Injury Loans): Bullock.

*Contiguous Counties:*

(Economic Injury Loans Only): Alabama, Barbour, Russell.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–15716 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11800 and #11801]**

### Kansas Disaster #KS–00035

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–1849–DR), dated 06/25/2009.

*Incident:* Severe Storms, Flooding, Straight-line Winds, and Tornadoes.

*Incident Period:* 04/25/2009 through 05/16/2009.

**DATES:** *Effective Date:* 06/25/2009.

*Physical Loan Application Deadline Date:* 08/24/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/25/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

*The following areas have been determined to be adversely affected by the disaster:*

*Primary Counties:* Anderson, Barber, Bourbon, Butler, Chase, Cherokee, Coffey, Cowley, Crawford, Elk, Finney, Greenwood, Harper, Harvey, Kingman, Labette, Linn, Lyon, Marion, Marshall, Montgomery, Morris, Neosho, Reno, Rice, Sumner, Wabaunsee, Wilson.

*The Interest Rates are:*

| | Percent |
|---|---|
| *Other (Including Non-Profit Organizations) With Credit Available Elsewhere:* | 4.500 |
| *Businesses and Non-Profit Organizations Without Credit Available Elsewhere:* | 4.000 |

The number assigned to this disaster for physical damage is 11800B and for economic injury is 11801B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. E9–15714 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11794 and #11795]**

### Oklahoma Disaster #OK–00032

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 06/29/2009.

*Incident:* Severe Storms and Tornadoes.

*Incident Period:* 05/13/2009.

**EFFECTIVE DATES:** 06/29/2009.

*Physical Loan Application Deadline Date:* 08/28/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/29/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Caddo.

Contiguous Counties: Oklahoma: Blaine, Canadian, Comanche, Custer, Grady, Kiowa, Washita.

*The Interest Rates are:*

| | Percent |
|---|---|
| Homeowners with Credit Available Elsewhere | 4.875 |
| Homeowners without Credit Available Elsewhere | 2.437 |
| Businesses with Credit Available Elsewhere | 6.000 |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) with Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11794 B and for economic injury is 11795 0.

The State which received an EIDL Declaration # is Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 29, 2009.

**Karen G. Mills,**

*Administrator.*

[FR Doc. E9–15819 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.5 (3½) percent for the July–September quarter of FY 2009.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Richard C. Blewett,**

*Acting Director, Office of Financial Assistance.*

[FR Doc. E9–15911 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Center Advisory Board

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of open Federal Advisory Committee meetings.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time and agenda for the third quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

**DATES:** The meetings for the fourth quarter will be held on the following dates:

Tuesday, July 21, 2009 at 1 p.m. EST.
Tuesday, August 18, 2009 at 1 p.m. EST.
Tuesday, September 15, 2009 at 1 p.m. EST.

**ADDRESSES:** These meetings will be held via conference call.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

*The purpose of these meetings is to discuss the following issues pertaining to the SBDC Advisory Board:*

— Summer Site Visit
— ASBDC Fall Conference
— White Paper Issues
— SBA Update
— Member Roundtable

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by Friday, July 17th by fax or e-mail. Her contact information is Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone: 202–619–1612, Fax: 202–481–0134, e-mail: *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

**Meaghan Burdick,**

*Acting Committee Management Officer.*

[FR Doc. E9–15712 Filed 7–2–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Form T–6, OMB Control No. 3235–0391, SEC File No. 270–344.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management Budget for extension and approval.

Form T–6 (17 CFR 269.9) is a statement of eligibility and qualification for a foreign corporate trustee under the

Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–6 provides the basis for determining if the foreign corporate trustee is qualified. Form T–6 takes approximately 17 burden hours per response and is filed by approximately 15 respondents annually. We estimate that 25% of the 17 hours (4.25 hours) is prepared by the filer for an annual reporting burden of 64 hours (4.25 hours per response × 15 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 29, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15721 Filed 7–2–09; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities. OMB Control No. 3235–0622, SEC File No. 270–560.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities ("Statement") under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act") and the Investment Advisers Act of 1940 (15 U.S.C. 80b *et seq.*) ("Advisers Act").

The Statement was issued by the Commission, together with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (together, the "Agencies"), in May 2006. The Statement describes the types of internal controls and risk management procedures that the Agencies believe are particularly effective in assisting financial institutions to identify and address the reputational, legal, and other risks associated with elevated risk complex structured finance transactions.

The primary purpose of the Statement is to ensure that these transactions receive enhanced scrutiny by the institution and to ensure that the institution does not participate in illegal or inappropriate transactions.

The Commission estimates that approximately 5 registered broker-dealers or investment advisers will spend an average of approximately 25 hours per year complying with the Statement. Thus, the total compliance burden is estimated to be approximately 125 burden-hours per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *shagufta_ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: June 29, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15777 Filed 7–2–09; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 11a–2, SEC File No. 270–267, OMB Control No. 3235–0272.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 11a–2 (17 CFR 270.11a–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of any administrative fee or sales load imposed in connection with an exchange offer.

There are currently 743 registrants governed by Rule 11a–2. The Commission includes the estimated burden of complying with the information collection required by Rule 11a–2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a–2 in the separate PRA submissions for those registration statements (see the separate PRA submissions for Form N–3 (17 CFR 274.11b), Form N–4 (17 CFR 274.11c) and Form N–6 (17 CFR 274.11d). The Commission is requesting a burden of one hour for Rule 11a–2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 11a–2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N–3, Form N–4 and Form N–6).

The information collection requirements imposed by Rule 11a–2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

*Please direct general comments regarding the above information to the following persons:* (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 29, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15722 Filed 7–2–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60182; File No. SR–NASDAQ–2009–057]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide an Optional Anti-Internalization Functionality

June 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2009, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. NASDAQ filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes a rule change to provide an optional anti-internalization functionality.

The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets.

* * * * *

4757. Book Processing

(a) System orders shall be executed through the Nasdaq Book Process set forth below:

(1)–(3) No Change.

*(4) Exception: Anti-Internalization—Market participants may direct that quotes/orders entered into the System not execute against quotes/orders entered under the same MPID. In such a case, the later entered of the quote/orders will be cancelled back to the entering party.*

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ is proposing to provide a voluntary anti-internalization function. Under the proposal, market participants entering quotes/orders under a specific market participant identifier ("MPID") may voluntarily direct that they not execute against other quotes/orders entered into the System under the same MPID.

Under the proposal, the System, if requested, will not execute quote/orders entered under the same MPID against each other. Instead, the System will execute against all eligible trading interest of other market participants, in time-priority, up to the point where it would interact with a resting order having the MPID and thereupon immediately cancel any remaining portion of the most recently entered of the two same-MPID quote/orders to its entering party.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. Nasdaq notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq notes that similar functionality has previously approved for earlier Nasdaq market systems.[7]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See* SR–NASD–2003–039.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the benefits of this functionality to NASDAQ market participants expected from the rule change will not be delayed. The Commission believes that waiving the 30-day operative delay to make this functionality available without delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–057 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–057. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NASDAQ. 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–2009–057 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15740 Filed 7–2–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60177; File No. SR–CBOE–2009–037]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Amend Its Minor Rule Violation Plan

June 25, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on June 17, 2009.[3] Subsequently, on June 23, 2009, the Exchange filed Amendment No. 2.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend CBOE Rule 17.50—Imposition of Fines for Minor Rule Violations to (i) increase and strengthen the sanctions imposed under CBOE's Minor Rule Violation Plan; (ii) incorporate additional violations into CBOE's Minor Rule Violation Plan; (iii) delete obsolete or duplicative sections of the rule; and (iv) make various non-substantive technical changes to the rule. The text of the proposed rule change is available on the Exchange's

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 is a partial amendment that makes four non-substantive, technical changes to the rule text submitted as Exhibit 5 to SR–CBOE–2009–037.

[4] Amendment No. 2 is a partial amendment that makes corrections to the description of the changes submitted in Amendment No. 1.

Web site (*http://www.cboe.com/Legal*), at the Exchange's Office of the Secretary, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

CBOE has recently conducted a comprehensive review of its Minor Rule Violation Plan. As a result of this review, CBOE is proposing to (i) increase and strengthen the sanctions imposed for various violations; (ii) incorporate additional violations into the Exchange's Minor Rule Violation Plan; (iii) delete obsolete or duplicative sections of the rule; and (iv) make various non-substantive changes to the rule.

The Exchange believes that increasing the fine levels specified and lengthening the surveillance period from a twelve month period to a rolling twenty-four month period will serve as an effective deterrent to future violative conduct. Where the Exchange is proposing to increase the look-back period to twenty-four months, the Exchange will consider any violations that resulted in formal disciplinary action within the previous twenty-four months for purposes of calculating the summary fine. Similarly, where the Exchange is proposing to incorporate new violations into its Minor Rule Violation Plan, the Exchange will consider violations resulting in formal disciplinary action within the previous twenty-four month period when determining whether previous violations have occurred for purposes of calculating a summary fine. CBOE believes that the proposed changes will allow for consistency throughout Rule 17.50. CBOE is also proposing to delete obsolete or duplicative provisions from its Minor Rule Violation Program to diminish any confusion in the application of the Rule.

CBOE is proposing to incorporate additional violations into its Minor Rule Violation Plan. These violations include (i) exercise limits; (ii) trading in restricted classes; (iii) Linkage violations (including order protection violations and locked or crossed violations); (iv) Market-Maker quoting obligations; (v) failure to report position and account information; and failure to designate and identify to the Exchange a person or persons responsible for implementing and monitoring the Anti-Money Laundering ("AML") compliance program. CBOE believes that these violations are suitable for incorporation into the Minor Rule Violation Plan because these violations are generally technical in nature. Further, CBOE will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into its Minor Rule Violation Plan. As with all of the violations incorporated into CBOE's Minor Rule Violation Plan, CBOE retains the ability to refer any violation to its Business Conduct Committee under Rule 17.50 should the circumstances warrant such referral.

CBOE is specifically proposing the following modifications to Rule 17.50:

*Exercise Limit Violations*

CBOE is proposing to modify its Minor Rule Violation Plan to incorporate exercise limit violations. Specifically, CBOE is proposing to modify Rule 17(g)(1) to add exercise limits to the section that currently addresses position limits. The fine levels for exercise limit violations will match the fine levels for position limits. In particular, a first offense will be subject to a $500 fine. A second offense will be subject to a $1,000 fine and a third offense will be subject to a $2,500 fine. A fourth offense and any subsequent offenses will be subject to a $5,000 fine. The number of offenses will be calculated on a rolling twenty-four month period.

CBOE believes these changes will serve as an effective deterrent to future violative conduct. CBOE notes that this proposal is consistent with the minor rule violation plans in place at the NYSE AMEX LLC ("AMEX") and NYSE Arca, Inc. ("ARCA").[5] As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

*Failure To File FOCUS Reports in a Timely Manner*

CBOE is proposing to make a technical change to clarify that FOCUS Reports that are received by the Exchange more than ninety days late will be referred to the Exchange's Business Conduct Committee. The existing schedule does not clearly reflect how a FOCUS Report that is received on the ninetieth day would be handled for purposes of assessing a summary fine. Therefore, CBOE is proposing to change the reference to "90+" days in the sanction schedule to "91+" days.

*Late Submission of Trading Data*

CBOE is proposing to modify its Minor Rule Violation Plan as it applies to the failure to respond in a timely manner to a request for automated submission of trading data ("Blue Sheets") as set forth in Rule 17(g)(3). First, CBOE is proposing to increase the look-back period from twelve months to twenty-four months. CBOE is also proposing to delete the provision that enabled the Exchange to issue a summary fine based on the number of days Blue Sheets were submitted late. With the increased ease of automation for the purpose of submitting trading information in the securities industry, CBOE believes that this breakdown is no longer necessary. Therefore, CBOE is proposing to modify Rule 17.50(g)(3) to enable the Exchange to issue a summary fine when the Exchange does not receive a response to a Blue Sheet request within ten (10) days. In conjunction with these changes, CBOE is proposing to assess a $2,500 fine for a first offense. Any subsequent offenses within a rolling twenty-four (24) month period would be subject to a $5,000 fine or referral to the Exchange's Business Conduct Committee. CBOE believes these changes will serve as an effective deterrent to future violative conduct.

*Failure To Book and Display Limit Orders That Would Improve the Disseminated Quote*

The Securities and Exchange Commission approved a CBOE filing in November 2005[6] removing the agency function from Designated Primary Market-Makers ("DPM"). Upon removal of this function, CBOE established PAR Officials who have since been required to comply with the limit order display obligations as set forth in Rule 7.12. CBOE Rule 7.12 defines a PAR Official as "an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating the PAR workstation in a DPM trading crowd

[5] *See* AMEX Rule 590 Section (g) of Part 1 and ARCA Rule 10.12(k)(i)(21).

[6] *See* Securities Exchange Act Release No. 34–52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (SR–CBOE–2005–46).

with respect to the classes of options assigned to him/her; (ii) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (iii) effecting proper executions of orders placed with him/her." Pursuant to Rule 7.12, PAR Officials may not maintain any affiliation with a member that is authorized to act as a Market-Maker. As the obligation to display limit orders is now a function of CBOE Staff (or a designated independent contractor), CBOE is proposing to delete this violation type from Rule 17.50(g)(5).

CBOE is also proposing several technical changes to this provision. First, the Exchange is proposing to modify the rule references in the bullets relating to book priority and due diligence. These provisions inappropriately reference "Rules 6.45" and "Rules 6.73." CBOE is proposing to modify these references to reflect "Rule 6.45" and "Rule 6.73." In addition, CBOE is proposing to modify the fine schedule in a manner that is consistent with the form of other fine schedules under the Exchange's Minor Rule Violation Plan. In particular, CBOE is proposing to replace the existing reference to "Subsequent Offenses" with a reference to "4th and 5th Offenses." The fine allocated to fourth and fifth offenses for violations of this provision would range from $3,500 to $5,000. CBOE is also proposing to replace the note referencing the disposition of 6th and subsequent offenses with a separate entry for "Subsequent Offenses." Any violations falling under the "Subsequent Offenses" category would be referred to the Exchange's Business Conduct Committee. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

*Failure To Submit Trade Data on Trade Date*

CBOE is proposing to increase the look-back period in Exchange Rule 17.50(g)(7) from twelve months to twenty-four months. CBOE believes that the increased look-back period will serve as a deterrent to repetitive conduct.

*Violations of Exercise and Exercise Advice Rules for American-Style, Cash-Settled Index Options*

CBOE is proposing to increase the look-back period in Exchange Rule 17.50(g)(9) from twelve months to twenty-four months. CBOE is also proposing to establish a fixed sanction level for each offense. Under this proposal, the sanction levels for first and second offenses will increase from a Letter of Caution to $500 and $1,000 respectively. The Exchange is proposing to implement a $2,500 fine for a third offense. Any subsequent violations would either incur a $5,000 fine or be referred to the Business Conduct Committee for review. In addition, CBOE is proposing to eliminate the reference to fifth and sixth offenses. CBOE believes that the increased look-back period as well as the modified sanction levels will serve as an effective deterrent to future violative conduct. CBOE is also proposing a technical change to update the references to the numbered offenses to conform to other references within Exchange Rule 17.50.

*Communications to the Exchange or the Clearing Corporation*

CBOE is proposing to increase the look-back period in Exchange Rule 17.50(g)(10) from twelve months to twenty-four months. CBOE believes that the increased look-back period will serve as a deterrent to repetitive conduct.

CBOE is also proposing a technical change to Exchange Rule 17.50(g)(10) to correct the language in the reference to the third offense. This section currently references the "3nd Offense." CBOE is proposing to correct this language to provide "3rd Offense."

*Trading in Restricted Classes*

Exchange Rule 5.4 provides, with limited exceptions, that CBOE "* * * may prohibit any opening purchase or sale transactions in series of options * * * previously opened...to the extent it deems such action necessary or appropriate." CBOE is proposing to incorporate violations related to trading in restricted classes into the Minor Rule Violation Plan under Exchange Rule 17.50(g)(11). CBOE believes that these violations may be handled more efficiently through the summary fine process, particularly where the activity is the result of a technical or inadvertent error.

CBOE is proposing to implement a fine of $500 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a $2,500 fine and a third violation would be allocated a $5,000 fine. Any subsequent violations within a rolling twenty-four month period would be referred to the Exchange's Business Conduct Committee. The Exchange believes that these violations should be subject to the escalating fine schedule as proposed because this fine schedule will serve as a deterrent to future violative conduct. Firms are strongly encouraged to implement systems that will automatically prohibit opening transactions in restricted classes. As with other violations, any egregious activity or activity that is believed to be manipulative may be referred to CBOE's Business Conduct Committee.

*Violations of the Order Protection Rule*

Exchange Rule 6.83(d) provides, with limited exceptions, that "members may not engage in a pattern or practice of trading through better prices available on other exchanges." CBOE is proposing to incorporate violations of the trade through provision into CBOE Rule 17.50(g)(12). CBOE is proposing to adopt ranges for the sanction levels to be imposed according to the degree of the violation(s). Specifically, the fine for a first offense would range between $500 to $1,000. A second offense would be assessed a fine between $1,000 to $2,000 and a third offense would include a fine ranging between $2,500 to $5,000. In addition to the fine for a third offense, CBOE is proposing to also conduct a Staff Interview, a non-disciplinary regulatory action, to discuss the violations with the member and the member's plan for complying with the requirement in the future. Any subsequent violations will be assessed a $5,000 fine or will be referred to the Exchange's Business Conduct Committee. CBOE will maintain internal guidelines that will dictate the degree of conduct for which a specific sanction will be imposed. CBOE believes that these violations may be handled more efficiently under its Minor Rule Violation Plan, particularly where the violation is the result of a technical problem or inadvertent error. As with other violations, any egregious activity may be referred to CBOE's Business Conduct Committee.

CBOE notes that this provision is consistent with the minor rule violation plans in place at the AMEX, ARCA and the Boston Options Exchange Group LLC ("BOX").[7]

*Locked or Crossed Market Violations*

Exchange Rule 6.84 requires Market-Makers to unlock or uncross a locked or crossed market. A Market-Maker that fails to unlock or uncross a locked or crossed market within a reasonable amount of time is deemed to be in violation of Exchange Rule 6.84. CBOE is proposing to incorporate violations of Exchange Rule 6.84 into CBOE's Minor

[7] *See* AMEX Rule 590 Section (g) of Part 1, BOX Rule Chapter X Section 2(j) and ARCA Rule 10.12(k)(i)(29).

Rule Violation Plan under Exchange Rule 17.50(g)(13). CBOE is proposing to adopt ranges for the sanction levels to be imposed according to the degree of the violation(s). Specifically, the fine for a first offense would range between $500 and $1,000. A second offense would be assessed a fine between $1,000 to $2,000 and a third offense would include a fine ranging between $2,500 and $5,000. In addition to the fine for a third offense, CBOE is proposing to also conduct a Staff Interview, a non-disciplinary regulatory action, to discuss the violations with the member and the member's plan for complying with the requirement in the future. Any subsequent violations will be assessed a $5,000 fine or will be referred to the Exchange's Business Conduct Committee. CBOE will maintain internal guidelines that will dictate what specific sanction will be imposed for a particular violation. CBOE believes that these violations may be handled more efficiently under its Minor Rule Violation Plan, particularly where the violation is the result of a systematic or inadvertent error. As with other violations, any egregious activity may be referred to CBOE's Business Conduct Committee.

CBOE notes that this provision is consistent with the minor rule violation plans in place at the AMEX, BOX and ARCA.[8]

*Failure To Meet Market-Maker Obligations*

CBOE Market-Makers are required to meet certain obligations, including, but not limited to, the following: (i) Maintaining continuous electronic quotes[9] in an applicable percentage of the series in each of a Market-Maker's[10] appointed classes; (ii) quote within the maximum bid/ask differential in each of a Market-Maker's appointed classes as set forth in Exchange Rule 8.7(b)(iv); (iii) comply with the initial quote volume requirements set forth in Exchange Rule 8.7; and (iv) ensure that a trading rotation is initiated promptly following the opening of the underlying security (as applicable).[11]

CBOE is proposing to incorporate violations relating to Market-Maker Obligations into the Exchange's Minor Rule Violation Plan under Exchange Rule 17.50(g)(14). CBOE believes that these violations may be handled more efficiently under the Minor Rule Violation Plan. CBOE is proposing to adopt ranges for the sanction levels to be imposed according to the degree of the violation(s). Specifically, CBOE is proposing to assess fines ranging from $2,000–$4,000 for a first offense and $4,000–$5,000 for a second offense. Any subsequent violations will be referred to the Exchange's Business Conduct Committee. CBOE will maintain internal guidelines that will dictate the sanction that will be imposed for a particular violation (based on the degree of the violation). As with other violations, any egregious activity may be referred to CBOE's Business Conduct Committee.

Several other self-regulatory organizations have incorporated fines related to quoting obligation violations into a minor rule violation plan. For example, Chapter X, Sections 2(c) and 2(d) of the BOX rules set forth the fine schedule for violations of required quotation parameters and continuous quoting requirements. In addition, the International Securities Exchange, LLC ("ISE") Rule 1614(d)(6) sets forth the fine schedule for violations of required quoting parameters. AMEX Rule 590 Section (g) of Part 1, ARCA Rule 10.12(k)(i)(39) and ARCA Rule 10.12(k)(i)(41) provide fine schedules for various types of quoting obligation violations.

*Failure to Accurately Report Position and Account Information*

CBOE is proposing to incorporate violations for failing to accurately report position and account information in accordance with CBOE Rule 4.13 into the Minor Rule Violation Plan. The Exchange believes most of these violations are inadvertent and technical in nature. Processing routine violations under the Minor Rule Violation Plan would decrease the administrative burden of regulatory and enforcement staff as well as that of the Business Conduct Committee. In addition, staff would be able to more expeditiously process routine violations under the Minor Rule Violation Plan.

CBOE is proposing to assess a $500 fine for a first offense, a $1,000 fine for a second offense and a $2,500 fine for a third offense. Any subsequent offenses would be assessed a $5,000 fine or would be referred to the Business Conduct Committee. The number of offenses will be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

Among other things, CBOE Rule 4.13 requires each member to report to the Exchange the account and position information of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. Members report this information on the Large Option Position Report. CBOE, as a member of the Intermarket Surveillance Group (the "ISG"), as well as certain other self-regulatory organizations ("SROs") executed and filed on October 29, 2007 with the Securities and Exchange Commission, a final version of the Agreement pursuant to Section 17(d) of the Securities Exchange Act of 1934 (as amended) (the "Agreement")[12] and as amended on

[8] *See* AMEX Rule 590 Section (g) of Part 1, BOX Rule Chapter X Section 2(g) and ARCA Rule 10.12(k)(i)(35).

[9] Exchange Rule 1.1(ccc) provides: "With respect to a Market-Maker who is obligated to provide continuous electronic quotes on the Hybrid Trading System ("Hybrid Market-Maker"), the Hybrid Market-Maker shall be deemed to have provided "continuous electronic quotes" if the Hybrid Market-Maker provides electronic two-sided quotes for 99% of the time that the Hybrid Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. If a technical failure or limitation of a system of the Exchange prevents the Hybrid Market-Maker from maintaining, or prevents the Hybrid Market-Maker from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure shall not be considered in determining whether the Hybrid Market-Maker has satisfied the 99% quoting standard with respect to that option class. The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances."

[10] Exchange Rule 8.7 requires Market-Makers to continuously quote in 60% of the series in their appointed classes for those series with a time to expiration of less than nine months. Exchange Rule 8.15A requires Lead Market-Makers to provide continuous quotes in 90% of the series in their appointed classes. Exchange Rule 8.85 requires Designated Primary Market-Makers to provide continuous quotes in 90% of the series in multiply-listed, appointed classes and 100% of the series in singly-listed, appointed classes. Lastly, Exchange Rule 8.93 requires Electronic Designated Primary Market-Makers to provide continuous quotes in 90% of their appointed classes (or, alternatively respond to 98% of Request for Quotes if such functionality is available in an allocated class).

[11] Exchange Rule 8.15A requires Lead Market-Makers to ensure that a trading rotation is initiated in accordance with Rule 6.2B in 100% of the series in their appointed classes. Exchange Rule 8.85 requires Designated Primary Market-Makers to ensure that a trading rotation is initiated in accordance with Rule 6.2B in 100% of the series in their appointed classes. Exchange Rule 8.93 requires Electronic Designated Primary Market-Makers to ensure that a trading rotation is initiated in accordance with Rule 6.2B in 100% of the series in their appointed classes.

[12] *See* Securities Exchange Act Release No. 34–56941 (December 11, 2007).

April 11, 2008 [13] and October 9, 2008.[14] The participants to the Agreement incorporated the surveillance and sanctions of large options position reporting violations into the Agreement as of November 1, 2008. As such, the SROs have agreed that their respective rules concerning the reporting of large options positions, are common rules. As a result, this amendment to the Minor Rule Violation Plan will further result in the consistency of the sanctions among the SROs who are signatories to the Agreement with respect to regulatory actions arising from large option position reporting surveillance.

*Failure To Provide Prior Capital Withdrawal Notice*

With limited exceptions, Rule 15c3–1(e)(1) under the Act [15] requires brokers or dealers to provide notice to the Commission (in Washington, DC and the applicable regional office), the broker or dealer's Designated Examining Authority and, as applicable, the Commodity Futures Trading Commission at least "two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 day period, 30 percent of the broker or dealer's net capital." CBOE is proposing to incorporate violations of Rule 15c3–1(e)(1) under the Act [16] into the Exchange's Minor Rule Violation Plan under Exchange Rule 17.50(g)(16). CBOE believes that these violations may be handled more efficiently under the Minor Rule Violation Plan.

CBOE is proposing to assess a $2,500 fine for a first offense and a $5,000 fine for a second offense. Any subsequent offenses would be referred to the Business Conduct Committee. The number of offenses shall be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

*Failure To Provide Post Capital Withdrawal Notice*

With limited exceptions, Rule 15c3–1(e)(1) under the Act [17] requires brokers or dealers to provide notice to the Commission (in Washington, DC and the applicable regional office), the broker or dealer's Designated Examining Authority and, as applicable, the Commodity Futures Trading Commission within "two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the broker or dealer's excess net capital." CBOE is proposing to incorporate violations of Rule 15c3–1(e)(1)(ii) under the Act [18] into the Exchange's Minor Rule Violation Plan under Exchange Rule 17.50(g)(17). CBOE believes that these violations may be handled more efficiently under the Exchange's Minor Rule Violation Plan.

CBOE is proposing to assess a $1,000 fine for a first offense and a $2,500 fine for a second offense. Any subsequent offenses would be referred to the Business Conduct Committee. The number of offenses shall be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

*Failure To Designate and Identify AML Compliance Contact*

Exchange Rule 4.20 requires each member organization (and each member not associated with a member organization) to develop and implement a written AML compliance program. This rule requires a member or member organization (as applicable) to designate and identify to the Exchange a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program. Members and member organizations (as applicable) are also required to provide prompt notification to the Exchange regarding any change in such designation. CBOE believes that violations arising from a member or member organization's failure to provide such designation or notification of any change in such designation would be handled more efficiently under the Exchange's Minor Rule Violation Plan. CBOE is proposing to incorporate violations related to the failure to designate and identify the AML compliance program contact into the Minor Rule Violation Plan under Exchange Rule 17.50(g)(18).

CBOE is proposing to assess a $1,000 fine for a first offense and a $2,500 fine for a second offense. Any subsequent offenses would be referred to the Business Conduct Committee. The number of offenses shall be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

CBOE notes that this provision is consistent with the minor rule violation plans in place at the ARCA and the Financial Industry Regulatory Authority ("FINRA").[19]

*Amendments to Exchange Rule 17.50 Interpretations and Policies*

CBOE is proposing to delete Interpretation and Policy .01(a) from Exchange Rule 17.50. Exchange Rule 17.50(g)(1) currently sets forth the sanction levels under the Minor Rule Violation Plan for position limit violations. Prior to July 2008, Exchange Rule 17.50(g)(1)(a) set forth the sanction levels under the Minor Rule Violation Plan for position limit violations of non-member customers and Exchange Rule 17.50(g)(1)(b) set forth the sanction levels for position limit violations for all other accounts. The Commission approved a rule filing eliminating the distinction between non-member customers and all other accounts in Exchange Rules 17.50(g)(1)(a) and 17.50(g)(1)(b) in July 2008 and incorporating the sanction levels for position limit violations under Exchange Rule 17.50(g)(1).[20] Interpretation and Policy .01(a) specifically references and provides clarification for Rule 17.50(g)(1)(a). Since this provision no longer exists, this Interpretation and Policy is obsolete. Therefore, CBOE is proposing to delete Interpretation and Policy .01(a). As a result of this change, CBOE is also proposing to delete the section

[13] *See* Securities Exchange Act Release No. 34–57649 (April 11, 2008).

[14] *See* Securities Exchange Act Release No. 34–58765 (October 9, 2008).

[15] 17 CFR 240.15c3–1(e)(1).

[16] 17 CFR 240.15c3–1(e)(1)(i).

[17] *Supra* at note 8.

[18] 17 CFR 240.15c3–1(e)(1)(ii).

[19] *See* ARCA Rule 10.12(k)(iii)(12) and FINRA Rule 9217 (as it applies to New York Stock Exchange Rule 445(4)).

[20] *See* Securities Exchange Act Release No. 34–58119 (July 8, 2008), 73 FR 40646 (July 15, 2008) (SR–CBOE–2008–053).

designation of Interpretation and Policy .01(b) as this distinction is no longer necessary under Interpretation and Policy .01.

*Violations of Trading Conduct and Decorum Policies*

CBOE is proposing to issue a new Regulatory Circular to update and replace Regulatory Circular RG09–26. CBOE is proposing to modify the Circular to (i) establish a rolling twenty-four month look-back period for all offenses; (ii) establish fixed fine levels for Class A and Class B Offenses; (iii) change the classification of certain offenses; and (iv) remove obsolete or duplicative violations from the list of Class A and Class B Offenses. CBOE has attached the proposed changes to the revised circular in Exhibit 5.

CBOE is proposing to increase the look-back period from twelve months to twenty-four months for Class A Offenses and Class B Offenses. CBOE believes that the increased look-back period will serve as a deterrent for future similar conduct.

CBOE is also proposing to adopt fixed fine levels for trading conduct and decorum violations to promote consistency in the application of these fines. For Class A Offenses, CBOE will assess a fine of $1,000 for the first violation, $2,500 for the second violation and $5,000 for the third violation. CBOE is also proposing to remove the reference to "Subsequent Offenses" for Class A Offenses. CBOE believes that any member or member organization that is cited for more than three Class A Offenses within a rolling twenty-four month period should be referred to the Business Conduct Committee for formal disciplinary action. The nature of these violations warrants formal disciplinary action where recidivist behavior is involved. For Class B Offenses, CBOE is proposing to assess a fine of $250 for a first offense, $500 for a second offense, $1,000 for a third offense and $2,500 for any subsequent offenses.

CBOE is proposing to move one violation from a Class B Offense to a Class A Offense. Market-Makers are obligated to respond to a request for a market by an Order Book Official or PAR Official. Failure to respond to such a request has historically been considered a Class B Offense. Due to the nature of this violation, CBOE believes that it is more appropriate for this violation to be classified as a Class A Offense. In addition, CBOE is proposing to remove the qualification that a response must be provided to an Order Book Official since the obligation to respond to a market is not limited to requests for quotes from Order Book Officials. For example, Exchange Rule 8.7(d) sets forth the requirements for Market-Makers to respond to a request for quote from members, including floor brokers and PAR Officials.

CBOE is proposing to remove quote width violations from the Class A Offense list as CBOE is proposing that this violation be covered under Exchange Rule 17.50(g)(14). CBOE is also proposing to delete the Class A Offense relating to Violations of Rule 8.51 (Firm Quote) as this provision is duplicative. Firm quote violations are generally addressed under Exchange Rule 17.50(g)(5).

CBOE is proposing to clarify that the Class B Offense related to smoking applies to the use of any tobacco products in unauthorized areas. CBOE does not permit the use of any tobacco products inside the Exchange building. Further, the State of Illinois prohibits smoking in any public building and within fifteen feet of any public entrance.[21]

CBOE is proposing to delete a Class A Offense for Enabling/Assisting a Suspended Member or Associated Person to Gain Improper Access to the Floor. CBOE is also proposing to delete a Class B Offense for Gaining/Enabling Improper Access to the Floor. CBOE has significantly increased its physical security restrictions in recent years. Access to the trading floor requires use of a valid badge and a fingerprint scan associated with that badge. Further, CBOE believes that any attempt to enable improper access compromises the security of the Exchange. Such violations are considered very serious in nature and should be reviewed by the Business Conduct Committee.

CBOE is proposing to delete the Class A Offense for Effecting or Attempting to Effect a Transaction with No Public Outcry. CBOE no longer believes that this conduct is minor in nature. CBOE is also proposing to delete the Class B Offenses relating to Improper Use of Runners' Aisle, Trading in the Aisle and Impermissible Use of Member Phones. CBOE no longer sees these types of violations. CBOE is proposing to remove the Class B Offense of a Visitor Badge Returned Late or Not Returned. In addition, CBOE is proposing to delete a Class B Offense relating to a DPM Failure to Activate or Deactivate RAES. Since RAES is no longer available at CBOE, this provision is obsolete.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it would promote just and equitable principles of trade and protect investors and the public interest. The Exchange believes that the proposed rule changes will strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its surveillance and enforcement functions. Additionally, this proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Regulation 240.19d–1(c)(2) of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[21] *See* Illinois Public Act 095–0017.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(6).

Number SR–CBOE–2009–037 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–037. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–037 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15775 Filed 7–2–09; 8:45 am]

**BILLING CODE 8010–01–P**

[24] 17 CFR 200.30–3(a)(12) and 200.30–3(a)(44).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60176; File No. SR–NYSEAmex–2009–30]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Extend Through September 30, 2009, Its Waiver of Registered Representative Fees for New York Stock Exchange Member Organizations

June 25, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through September 30, 2009, its waiver of registered representative fees for New York Stock Exchange ("NYSE") member organizations. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In connection with the acquisition of the American Stock Exchange (renamed NYSE Amex after the acquisition) by NYSE Euronext, all equities trading conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, was moved on December 1, 2008, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the "NYSE Amex Trading Systems"), which are operated by the NYSE on behalf of NYSE Amex (the "Equities Relocation"). At the time of the Equities Relocation, by operation of NYSE Amex Equities Rule 2, all NYSE member organizations automatically became NYSE Amex member organizations. By acquiring NYSE Amex membership, the NYSE member organizations that were not previously NYSE Amex members would become subject to the NYSE Amex registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that had no NYSE Amex business prior to the Equities Relocation became NYSE Amex members without any action on their own part, NYSE Amex waived the application of its registered representative fees to those firms for the month of December. At that time, NYSE Amex stated that it expected to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.[3] The waiver was subsequently extended until June 30, 2009.[4] NYSE Amex has not yet determined how best to revise its registration fees in light of the accession to NYSE Amex membership of these NYSE member organizations. As such, NYSE Amex believes that it is appropriate to continue for the present its waiver of registered representative fees payable by member organizations which acquired their membership automatically in connection with the Equities Relocation. NYSE Amex will submit an amended filing to the Commission at such time as it wishes to end this waiver. In any event, the waiver as extended by this filing will expire on September 30, 2009. Consequently, NYSE Amex must submit a filing on or prior to that date to either adopt a new fee approach or to further extend the term of the waiver.

References to the Exchange in Footnote 2 of the NYSE Amex Options Price List are being changed in this filing from "NYSE Alternext US" and "NYSE Alternext" to "NYSE Amex," to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR–NYSEALTR–2008–09).

[4] *See* Exchange Act Release 59170 (December 29, 2008), 74 FR 486 (January 6, 2009) (SR–NYSEALTR–2008–19).

properly reflect the Exchange's current name.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6[5] of the Securities Exchange Act of 1934 (the "Act")[6] in general and Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as the waiver of registered representative fees applies only to firms that became NYSE Amex member organizations automatically without any action on their part and in spite of the fact that they did not conduct any NYSE Amex business.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–30 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–30 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15791 Filed 7–2–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60172; File No. SR–FINRA–2009–040]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2380 To Limit the Leverage Ratio Offered by Broker-Dealers for Certain Forex Transactions

June 25, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to adopt FINRA Rule 2380 to prohibit any member firm from permitting a customer to: (1) Initiate any forex position with a leverage ratio of greater than 1.5 to 1; and (2) withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA is proposing to limit the leverage ratio offered by broker-dealers for certain forex transactions to no more than 1.5 to 1. The proposed rule change addresses forex transactions in the off-exchange spot contract market. This market has grown in recent years following the passage of the Commodity Futures Modernization Act of 2000 ("CFMA"), which permits certain enumerated entities, including broker-dealers, to act as counterparties to a retail forex contract.[3] While most of the growth in this area has been concentrated in the futures commission merchant ("FCM") channel, recent changes in legislation have brought greater interest to forex by broker-dealers.[4] The proposed rule change seeks to limit investor losses resulting from small changes in the exchange rate of a foreign currency and is intended to reduce the risks of excessive speculation.

Paragraph (a) of the proposed rule change states that no member shall permit a customer to initiate a forex position (as defined below) with a leverage ratio greater than 1.5 to 1. Thus, at the time a customer initiates a forex position, the customer must deposit at least ⅔ of the notional value of the contract. Using the example in supplementary material .01, a customer entering into a forex contract representing $750,000 of a foreign currency must have an initial deposit of at least $500,000. The proposed rule change differs from the leverage limits in the FCM channel, where depending on the foreign currency selected, a customer at 400 to 1 leverage would need only an initial deposit of $1,875.

In addition, paragraph (a) also states that "no member shall permit a customer to withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1." This provision is intended to prevent a customer from depositing funds at the initiation of the forex position and then immediately withdrawing them once the position is established. If a customer were permitted to withdraw the funds once a position is established, the leverage limitation could easily be circumvented as the same deposit could be used to establish multiple forex positions.

The limitation on a customer's ability to withdraw funds that would cause the leverage ratio to exceed 1.5 to 1 differs from a maintenance margin requirement in that an adverse movement in a customer's forex contract will not necessitate the deposit of additional funds. The intra-day and day-to-day pricing changes of a forex contract may cause a customer to have a leverage ratio greater than 1.5 to 1. So long as a customer does not withdraw funds from those initially used to establish the position, a leverage ratio may exceed 1.5 to 1. FINRA considered imposing a maintenance margin requirement but determined that the level of initial deposit was sufficiently high that a maintenance margin requirement was not necessary.

The proposed rule change does not impact existing rules addressing the necessary customer funds to enter into and maintain a forex position. For example, Regulation T does not have margin requirements for forex and allows a customer to obtain nonpurpose credit in a good faith account to effect and carry transactions in forex.[5] However, it should be noted that any funds deposited in a margin account to maintain a forex position or any account equity derived from a forex position may not be used to purchase securities in that account.

Paragraph (b) of the proposed rule change establishes the key definitions. The term "forex" is defined to mean a foreign currency spot, forward, future, option or any other agreement, contract, or transaction in foreign currency that: (1) Is offered or entered into on a leveraged basis, or financed by the offeror, the counter party, or a person acting in concert with such person, (2) offered to or entered into with persons that are not eligible contract participants;[6] and (3) not executed on or subject to the rules of a contract market,[7] derivatives transaction execution facility,[8] national securities exchange,[9] or foreign board of trade.[10] FINRA is proposing an amended version of the definition of forex from what appeared in *Regulatory Notice* 09–06 by adding the terms "spot" and "forward" in order to clarify that the leverage limitation will apply to foreign currency transactions no matter how they are legally classified. FINRA's definition of forex is similar to the National Futures Association's ("NFA") definition of forex[11] and to amended Section 2(c)(2) of the Commodity Exchange Act which sets forth the scope of the Commodity Futures Trading Commission's ("CFTC") rulemaking jurisdiction.[12] The FINRA definition, however, does not contain an exclusion for certain spot and forward contracts found in the NFA and CFTC definitions, which were included due to CFTC jurisdictional limitations.[13]

Paragraph (b) also defines the term "leverage ratio" to mean the fraction represented by the numerator which is the notional value of a forex transaction, and the denominator, which is the amount of good faith deposit or account equity required from the customer for a forex position. For example, if the notional value of a forex contract is $250,000, and the customer deposits $200,000, the leverage ratio would be 1.25 to 1.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[14] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative

[3] Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763, 2763A–378 (2001).

[4] *See* CFTC Reauthorization Act of 2008, Public Law 110–246, 122 Stat. 1651 (2008).

[5] 12 CFR 220.6.

[6] "Eligible Contract Participants" ("ECPs") include regulated entities such as financial institutions, insurance companies, investment companies and broker-dealers. Certain corporations and individuals qualify as ECPs by meeting the requirements under the statute. *See* 7 U.S.C. 1a(12).

[7] "Contract markets" are markets that are designated by the CFTC that meet the criteria in Section 5 of the Commodity Exchange Act. *See* 7 U.S.C. 7.

[8] "Derivatives transaction execution facilities" ("DTEFs") are CFTC-registered trading facilities that limit access primarily to institutional or otherwise eligible traders and/or limit the products traded. *See* 7 U.S.C. 7a.

[9] A "national securities exchange" is a securities exchange that has registered with the SEC under Section 6 of the Exchange Act. *See* 15 U.S.C. 78f.

[10] A "foreign board of trade" means any organized exchange or trading facility located outside of the United States.

[11] NFA By-Law 1507(b).

[12] *See* CFTC Reauthorization Act of 2008, 13101 (to be codified at 7 U.S.C. 2(c)(2)(C)(i)(I)).

[13] NFA By-Law 1507(b) and CFTC Reauthorization Act of 2008, 13101 (to be codified at 7 U.S.C. 2(c)(2)(C)(i)(II)).

[14] 15 U.S.C. 78*o*–3(b)(6).

acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above in that it will limit leverage ratios, requiring greater initial deposits that will substantially reduce the likelihood that any small adverse percentage change in the exchange rate of a foreign currency will cause an investor's funds to be wiped out. Moreover, limiting the leverage ratios is intended to reduce the risks of excessive speculation.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The proposed rule change was published for comment in FINRA *Regulatory Notice* 09–06 (January 2009). FINRA received 109 comments in response to the *Regulatory Notice*. A copy of the *Regulatory Notice* is attached as Exhibit 2a, the index to the comment letters is attached as Exhibit 2b and copies of the comment letters received in response to the *Regulatory Notice* are attached as Exhibit 2c.[15]

Of the 109 comment letters received, none were in favor of the proposed rule change and 108 were opposed; one comment letter did not express an opinion.

Ninety-seven of the comment letters were from individual investors who opposed FINRA's attempts to limit the amount of leverage available.[16] FINRA believes the central theme in these comment letters was that it was unfair to lower the leverage ratios available and that neither the government nor any regulator should inhibit an individual's freedom to invest and make money.[17] In short, commenters believe that they should be entitled to invest their money at whatever leverage ratio they see fit. Several of these commenters[18] argued that the proposed rule change would kill the off-exchange retail forex business or force traders to trade in foreign, less regulated markets.[19] Many of the individual investors believed that the leverage limitations were unnecessary because they could manage their risk by trading in small amounts or by entering a stop-loss order.[20]

FINRA staff disagrees with these commenters and the *laissez faire* and *caveat emptor* approach. FINRA's mandate includes investor protection, and many of the comment letters, such as those from retirees and retail investors, are from individuals whose interests are traditionally helped by FINRA's regulatory program.[21] Taken to their logical conclusion, FINRA believes that these commenters would likely oppose many of FINRA's existing rules (including a 25% maintenance margin requirement, and the minimum equity of $25,000 for pattern day traders),[22] as well as the initial margin limitations in the Federal Reserve Board's Regulation T.[23] Further, while a stop-loss order may help minimize the losses on any particular forex position, it does not address the fact that at high levels of leverage, such as 400 or 100 to 1, a very small movement in the exchange rate of a foreign currency pair trade will quickly trigger the stop-loss provision and close out the position with a loss. Similarly, the fact that a firm will close out a customer position and not issue a margin call does not address the potential for losses resulting from such high leverage ratios.

In addition, these commenters believed that the proposal was targeted at the retail investor, while allowing larger institutional investors to have access to higher levels of leverage.[24] One commenter compared the proposed rule change to the "accredited investor" standard which he viewed as preventing the little guy from having access to the best deals.[25] Interestingly, some of those commenters who opposed the proposed rule change also acknowledged that existing levels of leverage were excessive and would not trade at these levels.[26]

Several broker-dealers submitted comment letters on the proposed rule change. Interactive Brokers, Knight, TD Ameritrade and thinkorswim believed that the investor protection benefits of the proposed rule change would not be attained as the proposal would merely divert customers' forex activities to non-FINRA members.[27] Knight urged FINRA to allow customers to trade forex at broker-dealers "on similar terms as accounts held at entities that are not regulated by FINRA." FINRA does not believe that the opportunity for customers to trade in a less-regulated environment or on more lenient terms is a compelling rationale to limit the application of the proposed rule change. Prior to soliciting comment on the proposed rule change in *Regulatory Notice* 09–06, FINRA reviewed the regulatory requirements of other regulators and concluded that the availability of such high levels of leverage was the crux of the problem faced by investors. FINRA acknowledges that different regulators may choose to pursue their regulatory mandate in separate ways; however,

[15] All references to commenters under this Item are to the commenters as listed in Exhibit 2b to the proposed rule change [SR–FINRA–2009–040].

[16] Abhay, Aird, Akhras, Ali, Andrews, Arthur, Avery, Chris, Cohn, Colman, Crowley, Dallmann, Daniels, David, Day, Decker, Delfino, Doozan, Evergreen, Figlewski, Findley, Fortner, Gallagher, Gallagher 2, Getline, Goff, GoodBoy, Gray, gslatham, Gurkan, Hoepker, Howell, Hurley, Issacs, Jackal, Jackson, Jacobs, James, Jim, Johnston, Jones, Kerr, Lambert, Langin, Lannon, Lebold, Leousis, Levy, Marsh, Marshall, Muir, National Information, Nadjakov, Negus, Newhouse, Nichols, Nick, nv46, O'Moore, Otlo, Overfield, Parker, Pellot, Pena, Prime, Prindle, Quesenberry, Rajenthiran, Ramlakhan, Ramsey, Rawlins, Revolg, Rice, Richardson, L. Richardson, Rigney, Rocha, Romero, Sabo, Salatino, Shore, Sinclair, Sinclair 2, Thomlinson, Tischer, Uwins, Vern, Walker, Waratah, Weaver, Weisbloom, Wilkes, Williams, Young, Young 2, Zarlengo and Zepco.

[17] Aird, Akhras, Avery, Day, Doozan, Findley, Gallagher, Gallagher 2, Getline, GoodBoy, gslatham, Jackson, Jacobs, James, Jones, Lannon, Marsh, National Information, Newhouse, nv46, O'Moore, Quesenberry, Ramsey, Revolg, Richardson, L. Richardson, Rigney, Sabo, Sinclair, Vern, Walker, Wilkes, Williams, Young and Zarlengo.

[18] Abhay, Akhras, Andrews, Crowley, David, Figlewski, Fortner, Getline, GoodBoy, Gray, Gurkan, Hoepker, Lambert, Lebold, Leousis, Nick, nv46, Prindle, Ramlakhan, Rawlins, Rice, Romero, Sinclair 2, Thomlinson, Tischer, Waratah, Wilkes, Williams and Zepco.

[19] Because many of these commenters are unfamiliar with FINRA and its jurisdiction, FINRA believes that these commenters mistakenly believe that the proposed rule change would eliminate their ability to trade forex at higher leverage levels. FINRA's proposal would have no direct effect on the leverage ratios offered by non-broker-dealers, which currently represent the overwhelming majority of participants in this industry. As of November 2008, the NFA had 26 Forex Dealer Members. *See* Lee Oliver, *Retail FX in the U.S.: A Market in Transformation*, Futures Industry Magazine, November/December 2008, at 35.

[20] Abhay, Colman, Gurkan, Leousis, Sinclair 2, Weisbloom and Williams.

[21] One investor noted that after finally saving up $114, he was able to start trading forex.

[22] *See* NASD Rule 2520.

[23] 12 CFR 220.

[24] Abhay, Arthur, Chris, Goff, Gurkan, James, Jim, Kerr, Leousis, Nadjakov, Newhouse, Nichols, Prime, Prindle, Ramsey, Sinclair, Sinclair 2, Vern, Weisbloom, Williams and Young 2.

[25] Avery.

[26] Crowley (offered 40 to 1, yet trades at no more than 2 to 1); Dallmann (says you should not risk more than 2% of your account balance); Delfino (allow for a maximum leverage of 100 to 1); Lambert (understanding lowering the limit to 100 to 1); Parker (proposing maximum leverage of 5 to 1 or 4 to 1); Ramlakhan (the firm he trades with offers 40 to 1, but he uses no more than 16 to 1); Revolg (leverage no less than 20 to 1); Uwins (stating "400:1 is getting a little ridiculous" and favoring 100:1 or less); and Waratah (uses a true leverage of 5 to 1).

[27] This view also was reflected in comment letters by FIA and FXC.

FINRA is not compelled to follow the standards adopted by other regulators.

FIA, FXC and thinkorswim urged FINRA to use the standards articulated in *Regulatory Notice* 08–66 (Retail Foreign Currency Exchange) and FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), and best practices adopted by the forex community in lieu of the proposed rule change. While FINRA believes that the protections afforded investors under *Regulatory Notice* 08–66 and FINRA Rule 2010 are meaningful, they do not, in FINRA's view, go far enough. FXC also questioned whether FINRA has the authority to control the terms of a non-securities transaction. FINRA does not read any provisions in the Act that prohibit it from proposing rules on broker-dealer conduct relating to non-securities. The standards for the rules of a national securities association in Section 15A of the Act include the "protect[ion] of investors" irrespective of whether such activity relates to securities. Ironically, FXC's premise that FINRA Rule 2010 and *Regulatory Notice* 08–66 are sufficient to protect investors contradicts its assertion that FINRA does not have authority to adopt rules relating to non-securities transactions.

FIA and Interactive Brokers stated that the proposed rule change is inconsistent with congressional intent in allowing a broker-dealer to engage in an off-exchange retail forex business. While Congress authorized a class of *regulated* entities to engage in an off-exchange retail forex business,[28] FINRA believes that there is nothing in the legislation to suggest that Congress intended that each regulated entity would adopt a conforming regulatory regime. Indeed, when the CFMA was adopted, Congress was well-aware of the differing regulatory regimes in the eligible entities. Moreover, FINRA believes Congress actually contributed to the regulatory disparities in only increasing the minimum net capital required for FCMs.[29]

Interactive Brokers, Roberts & Ryan and TradeStation suggested that FINRA adopt an exclusion from the proposed rule change for FINRA members that are dually registered broker-dealer/FCMs like themselves. Both Interactive Brokers and TradeStation stated that dual registrants will be subject to oversight by the CFTC and/or NFA. FINRA believes Interactive Brokers and TradeStation are misreading the CEA and the scope of the NFA's rules. The CEA specifically states that the CFTC's jurisdiction over off-exchange retail forex applies only to FCMs that *are not also a registered broker-dealer.*[30] Similarly, NFA exempts from its Forex Dealer Members entities *that are a member of a national securities association.*[31] Thus, Interactive Brokers' and TradeStation's off-exchange retail forex business operate outside the ambit of the CFTC and NFA rules tailored to forex. It is not sufficient for regulatory purposes that the CTFC and NFA can enforce their books and records and general anti-fraud provisions. Moreover, even if Interactive Brokers and TradeStation were to voluntarily submit to the NFA's jurisdiction for purpose of applying its off-exchange retail forex rules, FINRA would still have concerns about the level of leverage provided in what is a joint broker-dealer/FCM.

Interactive Brokers, thinkorswim and TradeStation also argued that the proposed rule change will disadvantage combined broker-dealer/FCMs. FINRA agrees that conducting an off-exchange retail forex business in a combined broker-dealer will subject the firm to a different regulatory regime than if the business were conducted in a separate FCM. Such differences exist today in the application of FINRA Rule 2010 and NASD Rule 2210 to joint broker-dealer/FCMs. FINRA also notes that joint broker-dealer/FCMs are in many other ways operating in a less regulated environment inasmuch as they operate outside of the CFTC and NFA rules on forex. However, the observation that either another regulatory scheme or practices occurring outside of any regulatory scheme allow business in retail forex at greater leverage levels is neither a compelling reason for FINRA to mandate a standard less than that deemed necessary by FINRA for investor protection nor does it demonstrate a deficiency for meeting the elements of approval of this proposed rule change under the Act.

Several commenters[32] suggested that disclosure about the risks of leverage, or the actual leverage, in a particular transaction would be an effective alternative to the proposed rule change. FINRA disagrees that disclosure alone is an effective regulatory solution. FINRA also notes that *Regulatory Notice* 08–66 already requires disclosures of the risks of forex trading and the risks and terms of leveraged trading.[33] SIFMA suggested that FINRA adopt a definition of retail customer. FINRA disagrees and believes that the reference to the "eligible contract participant" standard is most appropriate for the proposed rule change as that is the terminology used in the federal legislation that permits a broker-dealer to engage in an off-exchange retail forex business. SIFMA and TD Ameritrade also requested that FINRA adopt a hedging exemption to allow customers to hedge foreign currency exposure from securities. FINRA does not support a hedging exemption as there are many other available alternatives (*e.g.*, exchange traded futures and options, and other OTC products) that may be used to hedge foreign currency exposure. Furthermore, FINRA does not believe that the off-exchange retail forex markets are used for hedging and is concerned that burdens and complexities in establishing a hedging exemption will not be justified.

SIFMA also suggested that FINRA clarify whether Exchange Act Rule 15c3–3 is applicable to the deposit required to carry positions involving retail transactions in foreign exchange. FINRA will work with the SEC to publish an interpretation of Exchange Act Rule 15c3–3 that will address this question.

Finally, TD Ameritrade stated that the proposed rule change would cause broker-dealers to establish an FCM affiliate or to establish an introducing relationship with an NFA firm that offers off-exchange retail forex, and that the broker-dealer would therefore be unregulated with respect to its forex activity. FINRA disagrees and notes that *Regulatory Notice* 08–66 was very clear in reminding firms that broker-dealer forex activities, including referral and introducing activities, would be subject to FINRA Rule 2010.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[28] *See supra* note 6.

[29] CFTC Reauthorization Act of 2008, 13101 (to be codified at 7 U.S.C. 2(c)(2)(B)).

[30] CFTC Reauthorization Act of 2008, 1301 (to be codified at 7 U.S.C. 2(c)(2)(B)(i)(II)(cc)(AA)).

[31] NFA By-Law 306.

[32] Dallmann, Hurley, Rocha and Young.

[33] *See Regulatory Notice* 08–66, page 4.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–040 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–FINRA–2009–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2009–040 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15741 Filed 7–2–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60175; File No. SR–ISE–2009–36]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Linkage Fees

June 25, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 23, 2009, International Securities Exchange, LLC ("ISE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to extend through July 31, 2010 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage ("Linkage"). The text of the proposed rule change is available at the Exchange.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to extend for one year the pilot program establishing ISE fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders") sent through Linkage and executed on the ISE. The fees currently are effective for a pilot period scheduled to expire on July 31, 2009.[3] This filing would extend the pilot program for another year, through July 31, 2010.

The ISE fees affected by this filing are: The Linkage P Order fee of $0.27 per contract; the Linkage P/A Order fee of $0.18 per contract and a surcharge fee of between $0.02 and $0.16 per contract for trading certain licensed products (collectively "linkage fees").[4] These are the same fees that all ISE Members pay for non-customer transactions executed on the Exchange.[5] The ISE does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

The Exchange believes it is appropriate to charge fees for P Orders and P/A Orders executed through Linkage. Notably, while market makers on competing exchanges always can match a better price on the ISE, they never are obligated to send orders to the ISE through Linkage. However, if such market makers do seek the ISE's liquidity, whether through conventional orders or through the use of P Orders or P/A Orders, we believe it is appropriate to charge our Members the same fees levied on other non-customer orders. We appreciate that there has been limited experience with Linkage and that the Commission is continuing to study Linkage in general and the effect of fees on Linkage trading. Thus, this filing would extend the status quo with Linkage fees for an additional year. The Exchange is making no substantive changes to the way the pilot is currently operating, other than to extend the date of operation through July 31, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that

[3] *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Linkage Fees).

[4] Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

[5] The ISE charges these fees only to its Members, generally firms who clear P Orders and P/A Orders for market makers on the other linked exchanges.

an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. As discussed above, the ISE believes that this proposed rule change will equitably allocate fees by having all non-customer users of ISE transaction services pay the same fees. If the ISE were not to charge Linkage fees, the Exchange's fee would not be equitable, in that ISE Members would be subsidizing the trading of their competitors, all of whom access the same trading services.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Moreover, failing to adopt the proposed rule change would impose a burden on competition by requiring ISE Members to subsidize the trading of their competitors.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–36 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–ISE–2009–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–36 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15739 Filed 7–2–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–60174; File No. SR–BX–2009–030]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program for Linkage Fees on the Boston Options Exchange Facility

June 25, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 23, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"), the options trading facility of the Exchange, to extend until July 31, 2010, the current pilot program applicable to the options intermarket linkage ("Linkage") fees. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange's fees for Principal ("P") and Principal Acting as Agent ("P/A") Orders [3] executed on BOX currently operate under a pilot program scheduled to expire on July 31, 2009.[4] The Exchange proposes to extend the current pilot program for such Linkage fees through July 31, 2010. Because all Linkage orders received by BOX are for the account of a market maker on another exchange, Linkage fees that are applicable to P and P/A orders are the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of Linkage. The side of a BOX trade opposite an inbound P or P/A order would be billed normally as any other BOX trade. Consistent with the Linkage Plan, no fees will be charged to a party sending a Satisfaction Order to BOX. Rather, a fee will be charged to the BOX Participant that was responsible for the trade-through that caused the Satisfaction Order to be sent.

The Exchange believes that extending the Linkage fee pilot program until July 31, 2010, will give the Exchange and the Commission additional time and opportunity to evaluate the appropriateness of Linkage fees.

The Exchange also proposes to make a non-substantive change by correcting a cross-reference to an earlier section within the Fee Schedule regarding the pass through of surcharge fees.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–BX–2009–030 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–030 and should be submitted on or before July 27, 2009.

[3] Under Section 1(j) of Chapter XII of the BOX Rules, a "Linkage Order" means an Immediate or Cancel order routed through Linkage. There are three types of Linkage Orders:

(i) "P/A Order," which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Market Maker is acting as agent;

(ii) "P Order," which is an order for the principal account of a market maker (or equivalent entity on another Participant exchange) and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade Through.

[4] *See* Securities Exchange Act Release No. 58082 (July 2, 2008), 73 FR 39746 (July 10, 2008) (SR–BSE–2008–35). *See also* Securities Exchange Act Release No. 56167 (July 30, 2007), 72 FR 43302 (August 3, 2007) (SR–BSE–2007–33). *See also* Securities Exchange Act Release No. 54225 (July 27, 2006), 71 FR 44056 (August 3, 2006) (SR–BSE 2006–26). *See also* Securities Exchange Act Release No. 52147 (July 28, 2005) 70 FR 44706 (August 3, 2005) (SR–BSE–2005–28).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–15738 Filed 7–2–09; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA 2009–0001–N–16]**

### 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 approval of the following information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than September 4, 2009.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–New." Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Jackson at *nakia.jackson@dot.gov*. Please refer to the assigned OMB control number and the title of the information collection in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (*telephone:* (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law No. 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 of such activities by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the proposed information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Track Transportation Time Study.

*OMB Control Number:* 2130–New.

*Abstract:* The Rail Safety Improvement Act of 2008 (Pub. L. 110–432) calls for a track inspection time study to be performed by FRA. The information required to develop the report will be at least partially obtained through a series of information gathering surveys which are focused on various aspects of track inspection. Each survey will be customized for a particular segment of the workforce and will include track inspectors, track supervisors or roadmasters, middle management (division engineers), and senior management (chief engineers).

The purpose of the proposed study is to address four issues raised in the Rail Safety Improvement Act: (1) Determine whether the required intervals of track inspections for each class of track should be amended; (2) Determine whether track remedial action requirements should be amended; (3) Determine whether different track inspection and repair priorities or methods should be required; and (4) Determine whether the speed at which railroad track inspection vehicles operate and the scope of the territory they generally cover allow for proper inspection of the track and whether such speed and appropriate scope should be regulated by the Secretary.

*Form Number(s):* FRA F 6180.136; FRA F 6180.137.

*Affected Public:* Railroad Employees.

*Respondent Universe:* 500 Individuals.

*Frequency of Submission:* On occasion.

[9] 17 CFR 200.30–3(a)(12).

REPORTING BURDEN

| RFEI notice | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| —Track Inspectors—Focus Groups. | 20 Individuals | 16 responses | 20 hours | 320 hours. |
| —Track Inspectors—Standard Survey. | 600 Individuals | 200 responses | 1 hour | 200 hours. |
| —Track Supervisors (Roadmasters). | 35 Individuals | 25 responses | 1 hour | 25 hours. |
| —RR Middle Management (Div. Engineers). | 10 Individuals | 8 responses | 1 hour | 8 hours. |
| —RR Senior Management (Senior Engineers). | 10 Individuals | 8 responses | 1 hour | 8 hours. |

*Total Responses:* 257.

*Estimated Total Annual Burden:* 561 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 June 30, 2009.

**Kimberly Orben,**

*Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. E9–15853 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Office of Commercial Space Transportation; Notice of Availability of the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the Jacksonville Aviation Authority (JAA) Launch Site Operator License at Cecil Field, Florida (FL)

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

**ACTION:** Notice of Availability of Final EA and FONSI.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR Parts 1500–1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of the Final EA and FONSI for the Jacksonville Aviation Authority (JAA) Launch Site Operator License at Cecil Field, FL.

The EA was prepared in response to an application for a Launch Site Operator License from JAA. Under the Proposed Action, the FAA would issue a Launch Site Operator License to JAA to operate a facility for horizontal launches and landings of suborbital, manned reusable launch vehicles (RLVs). These vehicles, when operated out of Cecil Field, could carry space flight participants, scientific experiments, or payloads. The proposed launch site is located within the city limits of the City of Jacksonville, FL in Duval County, approximately 15 miles southwest of downtown Jacksonville. The EA addresses the potential environmental impacts of implementing the Proposed Action and the No Action Alternative of not issuing a Launch Site Operator License to JAA.

The FAA has posted the Final EA and FONSI on the Internet at *http://ast.faa.gov.* In addition, CDs of the EA and FONSI were sent to persons and agencies on the distribution list (found in Chapter 7 of the EA). A paper copy and a CD version of the EA and FONSI will be made available for review at the following locations:

Jacksonville Public Library—Argyle Branch, 7973 Old Middleburg Road South, Jacksonville, FL 32222.

Jacksonville Public Library—Webb Wesconnett Regional, 6887 103rd Street, Jacksonville, FL 32210.

Jacksonville Public Library—West Regional, 1425 Chaffee Road South, Jacksonville, FL 32221.

Jacksonville Public Library—Main Branch, 303 N Laura St, Jacksonville, FL 32202.

Green Cove Springs Library, 403 Ferris St., Green Cove Springs, FL 32043.

*Additional Information:* Under the Proposed Action, the FAA would issue a Launch Site Operator License to JAA that would allow them to operate Cecil Field for horizontal suborbital RLV launches. JAA has identified two types of horizontally launched RLVs, Concept X and Concept Z, which are considered typical vehicles that would be launched from Cecil Field. The RLVs would launch and land on Runway 18L–36R, the primary north-south runway at Cecil Field. Both proposed RLVs would take-off from Cecil Field under jet power. Rocket operations would occur in a designated offshore area, approximately 60 miles east of the Florida coast. The RLVs would return to Cecil Field as maneuverable gliders.

JAA proposes to use Cecil Field's existing infrastructure, such as hangars, control tower, and runways for commercial space launch operations. Therefore, JAA does not anticipate new construction activities at Cecil Field related to the proposed spaceport.

The only alternative to the Proposed Action analyzed in the EA is the No Action Alternative. Under this alternative, the FAA would not issue a Launch Site Operator License to JAA, and there would be no commercial space launches from Cecil Field. The site would continue to be available for existing general aviation and training-related activities.

A wide-array of resource areas were considered to provide a context for understanding and assessing the potential environmental effects of the Proposed Action, with attention focused on key issues. The resource areas considered included climate and air quality; coastal resources; compatible land use; Department of Transportation Act: Section 4(f) resources; farmlands; fish, wildlife, and plants; floodplains; hazardous materials, pollution prevention, and solid waste; historical, architectural, archaeological, and cultural resources; light emissions and visual resources; natural resources, energy supply, and sustainable design; noise; socioeconomics; water quality; wetlands; wild and scenic rivers; children's environmental health and safety risks; environmental justice; construction impacts; secondary (induced) impacts; airports/airport users; airspace; transportation; and cumulative impacts.

The FAA published a Notice of Availability of the Draft Final EA and FONSI in the **Federal Register** on April 21, 2009. The FAA hosted a public meeting during the comment period, on May 14, 2009 in Jacksonville, Florida during which members of the public, organizations, tribal groups, and government agencies had the opportunity to provide oral or written comments on the Draft EA. Two members of the public provided comments during the meeting. The public comment period ended on May 20, 2009. One written comment was received during the public comment period. The Final EA responds to all substantive comments and includes any changes or edits resulting from the comments received.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Czelusniak, Environmental Specialist, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–5924; E-mail *daniel.czelusniak@faa.gov*.

Issued in Washington, DC on June 29, 2009.

**Michael McElligott,**

*Manager, Space Systems Development Division.*

[FR Doc. E9–15872 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in Ohio

**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 (Interstate Routes 75 and 74 and adjacent road network and interchanges) in Cities of Cincinnati and St. Bernard, and the Village of Elmwood Place, in Hamilton County, Ohio. 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 January 4, 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. Mark L. Vonder Embse, P.E., Senior Transportation Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215; e-mail: *mark.vonderembse@dot.gov*; telephone: (614) 280–6854; FHWA Ohio Division Office's normal business hours are 7:30 a.m. to 4 p.m. (eastern time). You may also contact Mr. Stefan Spinosa, Project Manager, Ohio Department of Transportation, 505 South SR–741, Lebanon, Ohio 45036; telephone: (513) 933–6639.

**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 major highway improvement project in the State of Ohio: one additional through lane in each direction on I–75; changes in access for the following interchanges: Hopple Street (modernize with full access), Bates Avenue (access eliminated), I–74 (modernization with local access eliminated at Spring Grove Avenue, Central Parkway, and Colerain Avenue), Mitchell Avenue (redesigned), SR–562 (capacity improvements for the Norwood Lateral), Towne Street (closure of partial interchange), Paddock Road (improved operations on local roads), and I–74/Colerain Avenue/Beekman Street (upgrade to complete interchange). The total project length along I–75 is approximately eight miles. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on December 24, 2008, in the FHWA Finding of No Significant Impact (FONSI) issued on May 7, 2009, and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Ohio Department of Transportation at the addresses provided above.

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. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], 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(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996].

7. *Wetlands and Water Resources:* Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

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. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(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 June 15, 2009.

**Patrick A. Bauer,**

*Acting Division Administrator, Columbus, Ohio.*

[FR Doc. E9–15836 Filed 7–2–09; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 4626

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Form 4626, Asset Acquisition Statement.

**DATES:** Written comments should be received on or before September 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, at (202) 622–7381, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Evelyn.J.Mack@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Alternative Minimum Tax—Corporations.

*OMB Number:* 1545–0175.

*Form Number:* 4626.

*Abstract:* Section 55 of the Internal Revenue Code imposes an alternative minimum tax. The tax is 20% of the amount by which a corporation's taxable income adjusted by the items listed in sections 56 and 58, and by the tax preference items listed in section 57, exceed an exemption amount. This result is reduced by the alternative minimum tax foreign tax credit. If this result is more than the corporation's regular tax liability before all credits (except the foreign tax and possessions tax credits), the difference is added to the tax liability. Form 4626 provides a line-by-line computation of the alternative minimum tax.

*Current Actions:* There are no changes being made to Form 8594 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 60,000.

*Estimated Time per Respondent:* 43 hrs., 52 minutes.

*Estimated Total Annual Burden Hours:* 2,611,200.

The following paragraph applies to all of the collections of information covered by this notice:

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated 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.

Approved: June 24, 2009.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E9–15718 Filed 7–2–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8594

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Form 8594, Asset Acquisition Statement.

**DATES:** Written comments should be received on or before September 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, at (202) 622–7381, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Evelyn.J.Mack@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Asset Acquisition Statement.

*OMB Number:* 1545–1021.

*Form Number:* 8594.

*Abstract:* Internal Revenue Code section 1060 requires reporting to the IRS by the buyer and seller of the total consideration paid for assets in an applicable asset acquisition. The information required to be reported includes the amount allocated to goodwill or going concern value. Form 8594 is used to report this information.

*Current Actions:* There are no changes being made to Form 8594 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 13,200.

*Estimated Time per Respondent:* 16 hrs., 28 minutes.

*Estimated Total Annual Burden* Hours: 217,272.

*The following paragraph applies to all of the collections of information covered by this notice:*

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated 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.

Approved: June 23, 2009.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E9–15719 Filed 7–2–09; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8752

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Form 8752, Required Payment or Refund Under Section 7519.

**DATES:** Written comments should be received on or before *September 4, 2009* to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions this regulation should be directed to Dawn Bidne at (202) 622–3933, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Dawn.E.Bidne@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Required Payment or Refund Under Section 7519.

*OMB Number:* 1545–1181.

*Form Number:* 8752.

*Abstract:* Partnerships and S corporations use Form 8752 to compute and report the payment required under Internal Revenue Code section 7519 or to obtain a refund of net prior year payments. Such payments are required of any partnership or S corporation that has elected under Code section 444 to have a tax year other than a required tax year.

*Current Actions:* There is no change being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and farms.

*Estimated Number of Respondents:* 72,000.

*Estimated Time per Respondent:* 7 hr., 52 min.

*Estimated Total Annual Burden Hours:* 565,920.

*The following paragraph applies to all of the collections of information covered by this notice:*

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated 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.

Approved: June 24, 2009.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E9–15720 Filed 7–2–09; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 3520–A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Form 3520–A, Annual Information Return of Foreign Trust With a U.S. Owner.

**DATES:** Written comments should be received on or before September 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne, at (202) 622–3933, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet, at *Dawn.E.Bidne@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Information Return of Foreign Trust With A U.S. owner.

*OMB Number:* 1545–0160.

*Form Number:* 3520–A.

*Abstract:* Internal Revenue Code section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return. Form 8520–A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3820–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and business or other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time per Respondent:* 43 hrs., 24 min.

*Estimated Total Annual Burden Hours:* 21,700.

The following paragraph applies to all of the collections of information covered by this notice:

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated 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.

Approved: June 24, 2009.

**Allan Hopkins,**

*IRS Reports Clearance Officer.*

[FR Doc. E9–15723 Filed 7–2–09; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 990–W

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Form 990–W, Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

**DATES:** Written comments should be received on or before September 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

*OMB Number:* 1545–0976.

*Form Number:* 990–W.

*Abstract:* Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

*Current Actions:* There were minor changes in the form with the addition of six lines and one code reference. The dramatic decrease in burden hours by 167,082 hours was due to calculations made to more accurately calculate the burden after inspecting the form more thoroughly.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions and business or other for-profit organizations.

*Estimated Number of Respondents:* 28,971.

*Estimated Number of Response:* 7 hours, 36 minutes.

*Estimated Total Annual Burden Hours:* 220,310.

*The following paragraph applies to all of the collections of information covered by this notice:*

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated 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.

Approved: June 24, 2009.

**Allan Hopkins,**

*IRS Reports Clearance Office.*

[FR Doc. E9–15724 Filed 7–2–09; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8876

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Form 8876, Excise Tax on Structured Settlement Factoring Transactions.

**DATES:** Written comments should be received on or before September 4, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Dawn Bidne at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3933, or through the Internet at *Dawn.E.Bidne@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Excise Tax on Structured Settlement Factoring Transactions.

*OMB Number:* 1545–1826.

*Form Number:* 8876.

*Abstract:* Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 100.

*Estimated Time per Respondent:* 5 hours, 36 minutes.

*Estimated Total Annual Burden Hours:* 560.

The following paragraph applies to all of the collections of information covered by this notice:

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

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated 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.

Approved: June 22, 2009.

**R. Joseph Durbala,**

*IRS Reports Clearance Officer.*

[FR Doc. E9–15725 Filed 7–2–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

**[Docket ID OCC–2009–0009]**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1362]**

## FEDERAL DEPOSIT INSURANCE CORPORATION

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[Docket ID OTS–2009–0011]**

## NATIONAL CREDIT UNION ADMINISTRATION

### Proposed Interagency Guidance—Funding and Liquidity Risk Management

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); and National Credit Union Administration (NCUA).

**ACTION:** Notice with request for comment.

**SUMMARY:** The OCC, FRB, FDIC, OTS, and NCUA (the Agencies) in conjunction with the Conference of State Bank Supervisors (CSBS), request comment on the proposed guidance on funding and liquidity risk management (proposed Guidance). The proposed Guidance summarizes the principles of sound liquidity risk management that the agencies have issued in the past and, where appropriate, brings them into conformance with the "Principles for Sound Liquidity Risk Management and Supervision" issued by the Basel Committee on Banking Supervision (BCBS) in September 2008. While the BCBS liquidity principles primarily focuses on large internationally active financial institutions, the proposed guidance emphasizes supervisory expectations for all domestic financial institutions including banks, thrifts and credit unions.

**DATES:** Comments must be submitted on or before September 4, 2009.

**ADDRESSES:** Comments should be directed to:

*OCC:* Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title "Proposed Interagency Guidance—Funding and Liquidity Risk Management" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

*Instructions:* You must include "OCC" as the agency name and "Docket ID OCC–2009–0009" in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

*FRB:* You may submit comments, identified by Docket No. OP–1362, by any of the following methods:

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

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

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

• *Fax:* 202/452–3819 or 202/452–3102.

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

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

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

• *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web site.

• *E-mail: Comments@FDIC.gov.* Include "Proposed Interagency Guidance—Funding and Liquidity Management Risk" in the subject line of the message.

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

• *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

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

*Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal,* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

*OTS:* You may submit comments, identified by OTS–2009–0011, by any of the following methods:

• *E-mail address: regs.comments@ots.treas.gov.* Please include ID OTS–2009–0011 in the subject line of the message and include your name and telephone number in the message.

• *Fax:* (202) 906–6518.

• *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ID OTS–2009–0011.

• *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: ID OTS–2009–0011.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received will be posted to the OTS Internet Site at *http://www.ots.treas.gov/Supervision&Legal.Laws&Regulations* without change, including any personal information provided. Comments including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

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

*NCUA:* You may submit comments by any of the following methods (Please send comments by one method only):

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

*NCUA Web Site: http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx.* Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Proposed Interagency Guidance—Funding and Liquidity Risk Management," in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail @ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Kerri Corn, Director for Market Risk, Credit and Market Risk Division, (202) 874–5670 or J. Ray Diggs, Group Leader: Balance Sheet Management, Credit and Market Risk Division, (202) 874–5670.

*FRB:* James Embersit, Deputy Associate Director, Market and Liquidity Risk, 202–452–5249 or Mary Arnett, Supervisory Financial Analyst, Market and Liquidity Risk, 202–721–4534 or Brendan Burke, Supervisory Financial Analyst, Supervisory Policy and Guidance, 202–452–2987

*FDIC:* Kyle Hadley, Chief Capital Markets Examination Support, (202) 898–6532.

*OTS:* Jeff Adams, Capital Markets Specialist, Risk Modeling and Analysis, (202) 906–6388 or Marvin Shaw, Senior Attorney, Regulations and Legislation Division, (202) 906–6639.

*NCUA:* John Bilodeau, Program Officer, Examination and Insurance, (703) 518–6618.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The recent turmoil in the financial markets emphasizes the importance of good liquidity risk management to the safety and soundness of financial institutions. Supervisors worked on an international and national level through various groups (*e.g.,* Basel Committee on Banking Supervision, Senior Supervisors Group, Financial Stability Forum) to assess the implications from the current market conditions on an institution's assessment of liquidity risk and the supervisor's approach to liquidity risk supervision. The industry

through the Institute of International Finance (IIF) also performed work in the area of liquidity risk and issued guidelines in 2008. Additionally, supervisors in Europe and Asia have also worked on domestic liquidity guidance. This guidance focuses on all domestic financial institutions, including banks, thrifts, and credit unions. The proposed guidance emphasizes the key elements of liquidity risk management already addressed separately by the agencies, and provides consistent interagency expectations on sound practices for managing funding and liquidity risk.

**II. Request for Comment**

The agencies request comments on all aspects of the proposed guidance.

**III. Paperwork Reduction Act**

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated 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.

All comments will become a matter of public record. Comments should be addressed to:

*OCC:* Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

*FRB:* Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

*FDIC:* Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

*OTS:* Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

*NCUA:* Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

*All Agencies:* A copy of the comments may also be submitted to the OMB desk officer for the Agencies: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title of Information Collection:* Funding and Liquidity Risk Management.

*OMB Control Numbers:* New collection; to be assigned by OMB.

*Abstract:* Section 14 states that institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Significant business activities should be evaluated for liquidity risk exposure as well as profitability. More complex and sophisticated institutions should incorporate liquidity costs, benefits, and risks in the internal product pricing, performance measurement, and new product approval process for all material business lines, products and activities. Incorporating the cost of liquidity into these functions should align the risk-taking incentives of individual business lines with the liquidity risk exposure their activities create for the institution as a whole. The quantification and attribution of liquidity risks should be explicit and transparent at the line management level and should include consideration of how liquidity would be affected under stressed conditions.

Section 20 would require that liquidity risk reports provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors. Institutions should also report on the use of and availability of government support, such as lending and guarantee programs, and implications on liquidity positions, particularly since these programs are generally temporary or reserved as a source for contingent funding.

*Affected Public:*

*OCC:* National banks, their subsidiaries, and Federal branches or agencies of foreign banks.

*FRB:* Bank holding companies and state member banks.

*FDIC:* Insured state nonmember banks.

*OTS:* Federal savings associations and their affiliated holding companies.

*NCUA:* Federally-insured credit unions.

*Type of Review:* Regular.

*Estimated Burden:*

*OCC:*

*Number of respondents:* 1,560 total (13 large (over $100 billion in assets), 29 mid-size ($10–$100 billion), 1,518 small (less than $10 billion)).

*Burden under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 212,640 hours.

*FRB:*

*Number of respondents:* 5,892 total (26 large (over $100 billion in assets), 71 mid-size ($10–$100 billion), 5,795 small (less than $10 billion)).

*Burden under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 782,176 hours.

*FDIC:*

*Number of respondents:* 5,076 total (10 large (over $20 billion in assets), 309 mid-size ($1–$20 billion), 4,757 small (less than $1 billion)).

*Burden under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 705,564.

*OTS:*

*Number of respondents:* 801 total (14 large (over $100 billion in assets), 104 mid-size ($10–$100 billion), 683 small (less than $10 billion)).

*Burden under Section 14:* 720 hours per large respondent, 240 hours per mid-size respondent, and 80 hours per small respondent.

*Burden under Section 20:* 4 hours per month.

*Total estimated annual burden:* 128,128.

*NCUA:*

*Number of respondents:* 7,736 total (153 large (over $1 billion in assets), 501 mid-size ($250 million to $1 billion), and 7,082 small (less than $250 million)).

*Burden under Section 14:* 240 hours per large respondent, 80 hours per mid-size respondent, and 20 hours per small respondent.

*Burden under Section 20:* 2 hours per month.

*Total estimated annual burden:* 404,104.

## IV. Guidance

The text of the proposed Guidance on Funding and Liquidity Risk Management is as follows:

*Interagency Guidance on Funding and Liquidity Risk Management*

1. The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, "the agencies") in conjunction with the Conference of State Bank Supervisors (CSBS) [1] are issuing this guidance to provide consistent interagency expectations on sound practices for managing funding and liquidity risk. The guidance summarizes the principles of sound liquidity risk management that the agencies have issued in the past [2] and, where appropriate, brings these principles into conformance with the international guidance recently issued by the Basel Committee on Banking Supervision titled "Principles for Sound Liquidity Risk Management and Supervision.[3]

2. Recent events illustrate that liquidity risk management at many financial institutions is in need of improvement. Deficiencies include insufficient holdings of liquid assets, funding risky or illiquid asset portfolios with potentially volatile short-term liabilities, and a lack of meaningful cash flow projections and liquidity contingency plans.

3. The following guidance reiterates the process that institutions should follow to appropriately identify, measure, monitor and control their funding and liquidity risk. In particular, the guidance re-emphasizes the importance of cash flow projections, diversified funding sources, stress testing, a cushion of liquid assets, and a formal well-developed contingency funding plan (CFP) as primary tools for measuring and managing liquidity risk. The agencies expect all financial institutions [4] to manage liquidity risk using processes and systems that are commensurate with the institution's complexity, risk profile, and scope of operations. Liquidity risk management processes and plans should be well documented and available for supervisory review. Failure to maintain an adequate liquidity risk management process is considered an unsafe and unsound practice.

*Liquidity and Liquidity Risk*

4. *Liquidity* is a financial institution's capacity to meet its cash and collateral obligations at a reasonable cost. Maintaining an adequate level of liquidity depends on the institution's ability to efficiently meet both expected and unexpected cash flows and collateral needs without adversely affecting either daily operations or the financial condition of the institution.

5. *Liquidity risk* is the risk that an institution's financial condition or overall safety and soundness is adversely affected by an inability (or perceived inability) to meet its contractual obligations. An institution's obligations and the funding sources used to meet them depend significantly on its business mix, balance-sheet structure, and the cash-flow profiles of its on- and off-balance-sheet obligations. In managing their cash flows, institutions confront various situations that can give rise to increased liquidity risk. These include funding mismatches, market constraints on the ability to convert assets into cash or in accessing sources of funds (*i.e.*, market liquidity), and contingent liquidity events. Changes in economic conditions or exposure to credit, market, operation, legal, and reputation risks also can affect an institution's liquidity risk profile and should be considered in the assessment of liquidity and asset/liability management.

*Sound Practices of Liquidity Risk Management*

6. An institution's liquidity management process should be sufficient to meet its daily funding needs, and cover both expected and unexpected deviations from normal operations. Accordingly, institutions should have a comprehensive management process for identifying, measuring, monitoring and controlling liquidity risk. Because of the critical importance to the viability of the institution, liquidity risk management should be fully integrated into the institution's risk management processes. Critical elements of sound liquidity risk management include:

- Effective corporate governance consisting of oversight by the board of directors and active involvement by management in an institution's control of liquidity risk.
- Appropriate strategies, policies, procedures, and limits used to manage and mitigate liquidity risk.
- Comprehensive liquidity risk measurement and monitoring systems (including assessments of the current and prospective cash flows or sources and uses of funds) that are commensurate with the complexity and business activities of the institution.
- Active management of intraday liquidity and collateral.
- An appropriately diverse mix of existing and potential future funding sources.
- Adequate levels of highly liquid marketable securities free of legal, regulatory, or operational impediments that can be used to meet liquidity needs in stressful situations.
- Comprehensive contingency funding plans (CFPs) that sufficiently address potential adverse liquidity events and emergency cash flow requirements.
- Internal controls and internal audit processes sufficient to determine the adequacy of the institution's liquidity risk management process.

*Supervisors will assess these critical elements in their reviews of an institution's liquidity risk management*

[1] The various state banking supervisors may implement this policy statement through their individual supervisory process.

[2] For national banks, see the *Comptroller's Handbook on Liquidity*. For state member banks and bank holding companies, see the Federal Reserve's *Commercial Bank Examination Manual* (section 4020), *Bank Holding Company Supervision Manual* (section 4010), and *Trading and Capital Markets Activities Manual* (section 2030). For State non-member banks, see the FDIC's *Revised Examination Guidance for Liquidity and Funds Management* (Trans. No. 2002–01) (Nov. 19, 2001) as well as Financial Institution Letter 84–2008, *Liquidity Risk Management* (August 2008). For savings associations, see the Office of Thrift Supervision's *Examination Handbook*, section 530, "Cash Flow and Liquidity Management"; and the *Holding Companies Handbook*, section 600. For credit unions, see Letter to Credit Unions No. 02–CU–05, Examination Program Liquidity Questionnaire (March 2002). *Also see* Basel Committee on Banking Supervision, "Principles for Sound Liquidity Risk Management and Supervision," (September 2008).

[3] Basel Committee on Banking Supervision, "Principles for Sound Liquidity Risk Management and Supervision", September 2008. *See http://www.bis.org/publ/bcbs144.htm.* Federally-insured credit unions are not subject to principles issued by the Basel Committee.

[4] Unless otherwise indicated, this interagency guidance uses the term "financial institutions" or "institutions" to include banks, saving associations, credit unions, and affiliated holding companies. Federally-insured credit unions (FICUs) do not have holding company affiliations and therefore references to holding companies contained within this guidance are not applicable to FICUs.

*process in relation to its size, complexity, and scope of operations.*

*Corporate Governance*

7. The board of directors is ultimately responsible for the liquidity risk assumed by the institution. As a result, the board should ensure that the institution's liquidity risk tolerance is established and communicated in such a manner that all levels of management clearly understand the institution's approach to managing the trade-offs between liquidity risk and profits. The board of directors or its delegated committee of board members should oversee the establishment and approval of liquidity management strategies, policies and procedures, and review them at least annually. In addition, the board should ensure that it:

- Understands the nature of the liquidity risks of its institution and periodically reviews information necessary to maintain this understanding.
- Establishes executive-level lines of authority and responsibility for managing the institution's liquidity risk.
- Enforces management's duties to identify, measure, monitor, and control liquidity risk.
- Understands and periodically reviews the institution's CFPs for handling potential adverse liquidity events.
- Comprehends the liquidity risk profiles of important subsidiaries and affiliates as appropriate.

8. Senior management is responsible for ensuring that board-approved strategies, policies, and procedures for managing liquidity (on both a long-term and day-to-day basis) are appropriately executed within the lines of authority and responsibility designated for managing and controlling liquidity risk. This includes overseeing the development and implementation of appropriate risk measurement and reporting systems, liquid buffers of unencumbered marketable securities, CFPs, and an adequate internal control infrastructure. Senior management is also responsible for regularly reporting to the board of directors on the liquidity risk profile of the institution.

9. Senior management should determine the structure, responsibilities, and controls for managing liquidity risk and for overseeing the liquidity positions of the institution. These elements should be clearly documented in liquidity risk policies and procedures. For institutions comprised of multiple entities, such elements should be fully specified and documented in policies for each material legal entity and subsidiary. Senior management should be able to monitor liquidity risks for each entity across the institution on an ongoing basis. Processes should be in place to ensure that the group's senior management is actively monitoring and quickly responding to all material developments, and reporting to the board of directors as appropriate.

10. Institutions should clearly identify the individuals or committees responsible for implementing and making liquidity risk decisions. When an institution uses an asset/liability committee (ALCO) or other similar senior management committee, the committee should actively monitor the institution's liquidity profile and should have sufficiently broad representation across major institutional functions that can directly or indirectly influence the institution's liquidity risk profile (*e.g.*, lending, investment securities, wholesale and retail funding, *etc.*). Committee members should include senior managers with authority over the units responsible for executing liquidity-related transactions and other activities within the liquidity risk management process. In addition, the committee should ensure that the risk measurement system adequately identifies and quantifies risk exposure. The committee also should ensure that the reporting process communicates accurate, timely, and relevant information about the level and sources of risk exposure.

*Strategies, Policies, Procedures, and Risk Tolerances*

11. Institutions should have documented strategies for managing liquidity risk and clear policies and procedures for limiting and controlling risk exposures that appropriately reflect the institution's risk tolerances. Strategies should identify primary sources of funding for meeting daily operating cash outflows, as well as seasonal and cyclical cash flow fluctuations. Strategies should also address alternative responses to various adverse business scenarios.[5] Policies and procedures should provide for the formulation of plans and courses of actions for dealing with potential temporary, intermediate-term, and long-term liquidity disruptions. Policies, procedures, and limits also should address liquidity separately for individual currencies, legal entities, and business lines, when appropriate and material, as well as allow for legal, regulatory, and operational limits for the transferability of liquidity. Senior management should coordinate the institution's liquidity risk management with disaster, contingency, and strategic planning efforts, as well as with business line and risk management objectives, strategies, and tactics.

12. Policies should clearly articulate a liquidity risk tolerance that is appropriate for the business strategy of the institution considering its complexity, business mix, liquidity risk profile, and its role in the financial system. Policies should also contain provisions for documenting and periodically reviewing assumptions used in liquidity projections. Policy guidelines should employ both quantitative targets and qualitative guidelines. These measurements, limits, and guidelines may be specified in terms of the following measures and conditions, as applicable:

- Cash flow projections that include discrete and cumulative cash flow mismatches or gaps over specified future time horizons under both expected and adverse business conditions.
- Target amounts of unpledged liquid asset reserves.
- Measures used to identify volatile liability dependence and liquid asset coverage ratios. For example, these may include ratios of wholesale funding to total liabilities, potentially volatile retail (*e.g.*, high-cost or out-of-market) deposits to total deposits, and other liability dependency measures, such as short-term borrowings as a percent of total funding.
- Asset concentrations that could increase liquidity risk through a limited ability to convert to cash (*e.g.*, complex financial instruments,[6] bank-owned (corporate-owned) life insurance, and less marketable loan portfolios).
- Funding concentrations that address diversification of funding sources and types, such as large liability and borrowed funds dependency, secured versus unsecured funding sources, exposures to single providers of funds, exposures to funds providers by market segments, and different types of brokered deposits or wholesale funding.
- Funding concentrations that address the term, re-pricing, and market characteristics of funding sources. This may include diversification targets for short-, medium- and long-term funding, instrument type and securitization vehicles, and guidance on

[5] In formulating liquidity management strategies, members of complex banking groups should take into consideration their legal structures (branches versus separate legal entities and operating subsidiaries), key business lines, markets, products, and jurisdictions in which they operate.

[6] Financial instruments that are illiquid, difficult to value, marked by the presence of cash flows that are irregular, uncertain, or difficult to model.

concentrations for currencies and geographical markets.

• Contingent liability exposures such as unfunded loan commitments, lines of credit supporting asset sales or securitizations, and collateral requirements for derivatives transactions and various types of secured lending.

• Exposures of material activities, such as securitization, derivatives, trading, transaction processing, and international activities, to broad systemic and adverse financial market events. This is most applicable to institutions with complex and sophisticated liquidity risk profiles.

13. Policies also should specify the nature and frequency of management reporting. In normal business environments, senior managers should receive liquidity risk reports at least monthly, while the board of directors should receive liquidity risk reports at least quarterly. Depending upon the complexity of the institution's business mix and liquidity risk profile, management reporting may need to be more frequent. Regardless of an institution's complexity, it should have the ability to increase the frequency of reporting on short notice if the need arises. Liquidity risk reports should impart to senior management and the board a clear understanding of the institution's liquidity risk exposure, compliance with risk limits, consistency between management's strategies and tactics, and consistency between these strategies and the board's expressed risk tolerance.

14. Institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Significant business activities should be evaluated for both liquidity risk exposure and profitability. More complex and sophisticated institutions should incorporate liquidity costs, benefits, and risks in the internal product pricing, performance measurement, and new product approval process for all material business lines, products and activities. Incorporating the cost of liquidity into these functions should align the risk-taking incentives of individual business lines with the liquidity risk exposure their activities create for the institution as a whole. The quantification and attribution of liquidity risks should be explicit and transparent at the line management level and should include consideration of how liquidity would be affected under stressed conditions.

*Liquidity Risk Measurement, Monitoring and Reporting*

15. The process of measuring liquidity risk should include robust methods for comprehensively projecting cash flows arising from assets, liabilities, and off-balance-sheet items over an appropriate set of time horizons. Pro forma cash flow statements are a critical tool for adequately managing liquidity risk. Cash flow projections can range from simple spreadsheets to very detailed reports depending upon the complexity and sophistication of the institution and its liquidity risk profile under alternative scenarios. Given the critical importance that assumptions play in constructing measures of liquidity risk and projections of cash flows, institutions should ensure that the assumptions used are reasonable, appropriate, and adequately documented. Institutions should periodically review and formally approve these assumptions. Institutions should focus particular attention on the assumptions used in assessing the liquidity risk of complex assets, liabilities, and off-balance-sheet positions. Assumptions applied to positions with uncertain cash flows, including the stability of retail and brokered deposits and secondary market issuances and borrowings, are especially important when they are used to evaluate the availability of alternative sources of funds under adverse contingent liquidity scenarios. Such scenarios include, but are not limited to deterioration in the institution's asset quality or capital adequacy.

16. Institutions should ensure that assets are properly valued according to relevant financial reporting and supervisory standards. An institution should fully factor into its risk management the consideration that valuations may deteriorate under market stress and take this into account in assessing the feasibility and impact of asset sales on its liquidity position during stress events.

17. Institutions should ensure that their vulnerabilities to changing liquidity needs and liquidity capacities are appropriately assessed within meaningful time horizons, including intraday, day-to-day, short-term weekly and monthly horizons, medium-term horizons of up to one year, and longer-term liquidity needs over one year. These assessments should include vulnerabilities to events, activities, and strategies that can significantly strain the capability to generate internal cash.

*Stress Testing*

18. Institutions should conduct stress tests on a regular basis for a variety of institution-specific and market-wide events across multiple time horizons. The magnitude and frequency of stress testing should be commensurate with the complexity of the financial institution and the level of its risk exposures. Stress test outcomes should be used to identify and quantify sources of potential liquidity strain and to analyze possible impacts on the institution's cash flows, liquidity position, profitability, and solvency. Stress tests should also be used to ensure that current exposures are consistent with the financial institution's established liquidity risk tolerance. Management's active involvement and support is critical to the effectiveness of the stress testing process. Management should discuss the results of stress tests and take remedial or mitigating actions to limit the institution's exposures, build up a liquidity cushion, and adjust its liquidity profile to fit its risk tolerance. The results of stress tests should also play a key role in shaping the institution's contingency planning. As such, stress testing and contingency planning are closely intertwined.

*Collateral Position Management*

19. An institution should have the ability to calculate all of its collateral positions in a timely manner, including assets currently pledged relative to the amount of security required and unencumbered assets available to be pledged. An institution's level of available collateral should be monitored by legal entity, by jurisdiction and by currency exposure, and systems should be capable of monitoring shifts between intraday and overnight or term collateral usage. An institution should be aware of the operational and timing requirements associated with accessing the collateral given its physical location (*i.e.*, the custodian institution or securities settlement system with which the collateral is held). Institutions should also fully understand the potential demand on required and available collateral arising from various types of contractual contingencies during periods of both market-wide and institution-specific stress.

*Management Reporting*

20. Liquidity risk reports should provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial

performance, and other important risk factors. The types of reports or information and their timing will vary according to the complexity of the institution's operations and risk profile. Reportable items may include but are not limited to cash flow gaps, cash flow projections, asset and funding concentrations, critical assumptions used in cash flow projections, key early warning or risk indicators, funding availability, status of contingent funding sources, or collateral usage. Institutions should also report on the use of and availability of government support, such as lending and guarantee programs, and implications on liquidity positions, particularly since these programs are generally temporary or reserved as a source for contingent funding.

*Liquidity Across Legal Entities, and Business Lines*

21. An institution should actively monitor and control liquidity risk exposures and funding needs within and across legal entities and business lines, taking into account legal, regulatory, and operational limitations to the transferability of liquidity. Separately regulated entities will need to maintain liquidity commensurate with their own risk profiles on a stand-alone basis.

22. Regardless of its organizational structure, it is important that an institution actively monitor and control liquidity risks at the level of individual legal entities, and the group as a whole, incorporating processes that aggregate data across multiple systems in order to develop a group-wide view of liquidity risk exposures and identify constraints on the transfer of liquidity within the group.

23. Assumptions regarding the transferability of funds and collateral should be described in liquidity risk management plans.

*Intraday Liquidity Position Management*

24. Intraday liquidity monitoring is an important component of the liquidity risk management process for institutions engaged in significant payment, settlement and clearing activities. An institution's failure to manage intraday liquidity effectively, under normal and stressed conditions, could leave it unable to meet payment and settlement obligations in a timely manner, adversely affecting its own liquidity position and that of its counterparties. Among large, complex organizations, the interdependencies that exist among payment systems and the inability to meet certain critical payments has the potential to lead to systemic disruptions that can prevent the smooth functioning of all payment systems and money markets. Therefore, institutions with material payment, settlement and clearing activities should actively manage their intraday liquidity positions and risks to meet payment and settlement obligations on a timely basis under both normal and stressed conditions. Senior management should develop and adopt an intraday liquidity strategy that allows the institution to:

- Monitor and measure expected daily gross liquidity inflows and outflows.
- Manage and mobilize collateral when necessary to obtain intraday credit.
- Identify and prioritize time-specific and other critical obligations in order to meet them when expected.
- Settle other less critical obligations as soon as possible.
- Control credit to customers when necessary.
- Ensure that liquidity planners understand the amounts of collateral and liquidity needed to perform payment system obligations when assessing the organization's overall liquidity needs.

*Diversified Funding*

25. An institution should establish a funding strategy that provides effective diversification in the sources and tenor of funding. It should maintain an ongoing presence in its chosen funding markets and strong relationships with funds providers to promote effective diversification of funding sources. An institution should regularly gauge its capacity to raise funds quickly from each source. It should identify the main factors that affect its ability to raise funds and monitor those factors closely to ensure that estimates of fund raising capacity remain valid.

26. An institution should diversify available funding sources in the short-, medium- and long-term. Diversification targets should be part of the medium- to long-term funding plans and should be aligned with the budgeting and business planning process. Funding plans should take into account correlations between sources of funds and market conditions. Funding should also be diversified across a full range of retail as well as secured and unsecured wholesale sources of funds, consistent with the institution's sophistication and complexity. Management should also consider the funding implications of any government programs or guarantees it utilizes. As with wholesale funding, the potential unavailability of government programs over the intermediate- and long-term should be fully considered in the development of liquidity risk management strategies, tactics, and risk tolerances. Funding diversification should be implemented using limits addressing counterparties, secured versus unsecured market funding, instrument type, securitization vehicle, and geographic market. In general, funding concentrations should be avoided. Undue over-reliance on any one source of funding is considered an unsafe and unsound practice.

27. An essential component of ensuring funding diversity is maintaining market access. Market access is critical for effective liquidity risk management, as it affects both the ability to raise new funds and to liquidate assets. Senior management should ensure that market access is being actively managed, monitored, and tested by the appropriate staff. Such efforts should be consistent with the institution's liquidity risk profile and sources of funding. For example, access to the capital markets is an important consideration for most large complex institutions, whereas the availability of correspondent lines of credit and other sources of whole funds are critical for smaller, less complex institutions.

28. An institution needs to identify alternative sources of funding that strengthen its capacity to withstand a variety of severe institution-specific and market-wide liquidity shocks. Depending upon the nature, severity, and duration of the liquidity shock, potential sources of funding include, but are not limited to, the following:

- Deposit growth.
- Lengthening maturities of liabilities.
- Issuance of debt instruments.[7]
- Sale of subsidiaries or lines of business.
- Asset securitization.
- Sale (either outright or through repurchase agreements) or pledging of liquid assets.
- Drawing-down committed facilities.
- Borrowing.

*Cushion of Liquid Assets*

29. Liquid assets are an important source of both primary (operating liquidity) and secondary (contingent liquidity) funding at many institutions. Indeed, a critical component of an institution's ability to effectively

[7] Federally-insured credit unions can borrow funds (which includes issuing debt) as given in Section 106 of the Federal Credit Union Act (FCUA). Section 106 of the FCUA as well as § 741.2 of the NCUA Rules and Regulations establish specific limitations on the amount which can be borrowed. Federal Credit Unions can borrow from natural persons in accordance with the requirements of Part 701.38 of the NCUA Rules and Regulations.

respond to potential liquidity stress is the availability of a cushion of highly liquid assets without legal, regulatory, or operational impediments (*i.e.*, unencumbered) that can be sold or pledged to obtain funds in a range of stress scenarios. These assets should be held as insurance against a range of liquidity stress scenarios; including those that involve the loss or impairment of typically available unsecured and/or secured funding sources. The size of the cushion of such high-quality liquid assets should be supported by estimates of liquidity needs performed under an institution's stress testing as well as aligned with the risk tolerance and risk profile of the institution. Management estimates of liquidity needs during periods of stress should incorporate both contractual and non-contractual cash flows, including the possibility of funds being withdrawn. Such estimates should also assume the inability to obtain unsecured funding as well as the loss or impairment of access to funds secured by assets other than the safest, most liquid assets.

30. Management should ensure that unencumbered, highly liquid assets are readily available and are not pledged to payment systems or clearing houses. The quality of unencumbered liquid assets is important as it will ensure accessibility during the time of most need. For example, an institution could utilize its holdings of high-quality U.S. Treasury securities, or similar instruments, and enter into repurchase agreements in response to the most severe stress scenarios.

*Contingency Funding Plan* [8]

31. All financial institutions, regardless of size and complexity, should have a formal CFP that clearly sets out the strategies for addressing liquidity shortfalls in emergency situations. A CFP should delineate policies to manage a range of stress environments, establish clear lines of responsibility, and articulate clear implementation and escalation procedures. It should be regularly tested and updated to ensure that it is operationally sound.

32. Contingent liquidity events are unexpected situations or business conditions that may increase liquidity risk. The events may be institution-specific or arise from external factors and may include:

- The institution's inability to fund asset growth.
- The institution's inability to renew or replace maturing funding liabilities.
- Customers unexpectedly exercising options to withdraw deposits or exercise off-balance-sheet commitments.
- Changes in market value and price volatility of various asset types.
- Changes in economic conditions, market perception, or dislocations in the financial markets.
- Disturbances in payment and settlement systems due to operational or local disasters.

33. Insured institutions should be prepared for the specific contingencies that will be applicable to them if they become less than Well Capitalized pursuant to Prompt Correction Action.[9] Contingencies may include restricted rates paid for deposits, the need to seek approval from the FDIC/NCUA to accept brokered deposits, or the inability to accept any brokered deposits.[10]

34. A CFP provides a documented framework for managing unexpected liquidity situations. The objective of the CFP is to ensure that the institution's sources of liquidity are sufficient to fund normal operating requirements under contingent events. A CFP also identifies alternative contingent liquidity resources [11] that can be employed under adverse liquidity circumstances. An institution's CFP should be commensurate with its complexity, risk profile, and scope of operations.

35. Contingent liquidity events can range from high-probability/low-impact events to low-probability/high-impact events. Institutions should incorporate planning for high-probability/low-impact liquidity risks into the day-to-day management of sources and uses of funds. Institutions can generally accomplish this by assessing possible variations around expected cash flow projections and providing for adequate liquidity reserves and other means of raising funds in the normal course of business. In contrast, all financial institution CFPs will typically focus on events that, while relatively infrequent, could significantly impact the institution's operations. A CFP should:

- *Identify Stress Events.* Stress events are those that may have a significant impact on the institution's liquidity given its specific balance-sheet structure, business lines, organizational structure, and other characteristics. Possible stress events may include deterioration in asset quality, changes in agency credit ratings, Prompt Corrective Action (PCA) and CAMELS [12] ratings downgrades, widening of credit default spreads, operating losses, declining financial institution equity prices, negative press coverage, or other events that may call into question an institution's ability to meet its obligations.
- *Assess Levels of Severity and Timing.* The CFP should delineate the various levels of stress severity that can occur during a contingent liquidity event and identify the different stages for each type of event. The events, stages, and severity levels identified should include temporary disruptions, as well as those that might be more intermediate term or longer-term. Institutions can use the different stages or levels of severity identified to design early-warning indicators, assess potential funding needs at various points in a developing crisis, and specify comprehensive action plans.
- *Assess Funding Sources and Needs.* A critical element of the CFP is the quantitative projection and evaluation of expected funding needs and funding capacity during the stress event. This entails an analysis of the potential erosion in funding at alternative stages or severity levels of the stress event and the potential cash flow mismatches that may occur during the various stress levels. Management should base such analysis on realistic assessments of the behavior of funds providers during the event and incorporate alternative contingency funding sources. The analysis also should include all material on- and off-balance-sheet cash flows and their related effects. The result should be a realistic analysis of cash inflows, outflows, and funds availability at

[8] Financial institutions that have had their liquidity supported by temporary government programs administered by the Department of the Treasury, Federal Reserve and/or FDIC should not base their liquidity strategies on the belief that such programs will remain in place indefinitely.

[9] *See* 12 U.S.C. 1831o; 12 CFR Part 6 (OCC), 12 CFR Part 208, 12 CFR Part 308 (FDIC), and 12 CFR Part 565 (OTS) and 12 U.S.C. 1790d; 12 CFR Part 702 (NCUA).

[10] Section 38 of the FDI Act (*12 U.S.C. 1831o*) requires insured depository institutions that are not well capitalized to receive approval prior to engaging in certain activities. Section 38 restricts or prohibits certain activities and requires an insured depository institution to submit a capital restoration plan when it becomes undercapitalized. Section 216 of the Federal Credit Union Act and § 702 of the NCUA Rules and Regulations establish the requirements and restrictions for Federally-insured credit unions under Prompt Corrective Action. For brokered, nonmember deposits, additional restrictions apply to Federal credit unions as given in §§ 701.32 and 742 of the NCUA Rules and Regulations.

[11] There may be time constraints, sometimes lasting weeks, encountered in initially establishing lines with FRB and/or FHLB. As a result, financial institutions should plan to have these lines set up well in advance.

[12] Federally-insured credit unions are evaluated using the "CAMEL" rating system, which is substantially similar to the "CAMELS" system without the "S" component for rating Sensitivity to market risk. Information on NCUA's rating system can be found in Letter to Credit Unions 07–CU–12, CAMEL Rating System.

different time intervals during the potential liquidity stress event in order to measure the institution's ability to fund operations. Common tools to assess funding mismatches include:

○ *Liquidity gap analysis*—A cash flow report that essentially represents a base case estimate of where funding surpluses and shortfalls will occur over various future timeframes.

○ *Stress tests*—A pro forma cash flow report with the ability to estimate future funding surpluses and shortfalls under various liquidity stress scenarios and the institution's ability to fund expected asset growth projections or sustain an orderly liquidation of assets under various stress events.

• *Identify Potential Funding Sources.* Because liquidity pressures may spread from one funding source to another during a significant liquidity event, institutions should identify alternative sources of liquidity and ensure ready access to contingent funding sources. In some cases, these funding sources may rarely be used in the normal course of business. Therefore, institutions should conduct advance planning and periodic testing to ensure that contingent funding sources are readily available when needed.

• *Establish Liquidity Event Management Processes.* The CFP should provide for a reliable crisis management team and administrative structure, including realistic action plans used to execute the various elements of the plan for given levels of stress. Frequent communication and reporting among team members, the board of directors, and other affected managers optimize the effectiveness of a contingency plan during an adverse liquidity event by ensuring that business decisions are coordinated to minimize further disruptions to liquidity. Such events may also require the daily computation of regular liquidity risk reports and supplemental information. The CFP should provide for more frequent and more detailed reporting as the stress situation intensifies.

• *Establish a Monitoring Framework for Contingent Events.* Institution management should monitor for potential liquidity stress events by using early-warning indicators and event triggers. The institution should tailor these indicators to its specific liquidity risk profile. The early recognition of potential events allows the institution to position itself into progressive states of readiness as the event evolves, while providing a framework to report or communicate within the institution and to outside parties. Early warning signals may include but are not limited to negative publicity concerning an asset class owned by the institution, increased potential for deterioration in the institution's financial condition, widening debt or credit default swap spreads, and increased concerns over the funding of off-balance-sheet items.

36. To mitigate the potential for reputation contagion, effective communication with counterparties, credit-rating agencies, and other stakeholders when liquidity problems arise is of vital importance. Smaller institutions that rarely interact with the media should have plans in place for how they will manage press inquiries that may arise during a liquidity event. In addition, group-wide contingency funding plans, liquidity cushions, and multiple sources of funding are mechanisms that may mitigate reputation concerns.

37. In addition to early warning indicators, institutions that issue public debt, utilize warehouse financing, securitize assets, or engage in material over-the-counter derivative transactions typically have exposure to event triggers embedded in the legal documentation governing these transactions. Institutions that rely upon brokered deposits should also incorporate PCA-related downgrade triggers into their CFPs since a change in PCA status could have a material bearing on the availability of this funding source. Contingent event triggers should be an integral part of the liquidity risk monitoring system. Institutions that originate loans for asset securitization programs pose heightened liquidity concerns due to the unexpected funding needs associated with an early amortization event or disruption of funding pipelines. Institutions that securitize assets should have liquidity contingency plans that address this potential unexpected funding requirement.

38. Institutions that rely upon secured funding sources also are subject to potentially higher margin or collateral requirements that may be triggered upon the deterioration of a specific portfolio of exposures or the overall financial condition of the institution. The ability of a financially stressed institution to meet calls for additional collateral should be considered in the CFP. Potential collateral values also should be subject to stress tests since devaluations or market uncertainty could reduce the amount of contingent funding that can be obtained from pledging a given asset. Additionally, triggering events should be understood and monitored by liquidity managers.

39. Institutions should test various elements of the CFP to assess their reliability under times of stress. Institutions that rarely use the type of funds they identify as standby sources of liquidity in a stress situation, such as the sale or securitization of loans, securities repurchase agreements, Federal Reserve discount window borrowing, or other sources of funds, should periodically test the operational elements of these sources to ensure that they work as anticipated. However, institutions should be aware that during real stress events, prior market access testing does not guarantee that these funding sources will remain available within the same timeframes and/or on the same terms.

40. Larger, more complex institutions can benefit by employing operational simulations to test communications, coordination, and decision-making involving managers with different responsibilities, in different geographic locations, or at different operating subsidiaries. Simulations or tests run late in the day can highlight specific problems such as difficulty in selling assets or borrowing new funds at a time when business in the capital markets may be less active.

*Internal Controls*

41. An institution's internal controls consist of procedures, approval processes, reconciliations, reviews, and other mechanisms designed to provide assurance that the institution manages liquidity risk consistent with board-approved policy. Appropriate internal controls should address relevant elements of the risk management process, including adherence to policies and procedures, the adequacy of risk identification, risk measurement, reporting, and compliance with applicable rules and regulations.

42. Management should ensure that an independent party regularly reviews and evaluates the various components of the institution's liquidity risk management process. These reviews should assess the extent to which the institution's liquidity risk management complies with both supervisory guidance and industry sound practices taking into account the level of sophistication and complexity of the institution's liquidity risk profile.[13] Smaller, less-complex institutions may achieve independence by assigning this responsibility to the audit function or other qualified individuals independent of the risk management process. The

[13] This includes the standards established in this interagency guidance as well as the supporting material each agency provides in its examination manuals and handbooks directed at their supervised institutions. Industry standards include those advanced by recognized industry associations and groups.

independent review process should report key issues requiring attention including instances of noncompliance to the appropriate level of management for prompt corrective action consistent with approved policy.

*Holding Company—Liquidity Risk Management*

43. Financial holding companies, bank holding companies, and savings and loan holding companies (collectively, "holding companies") should develop and maintain liquidity management processes and funding programs that are consistent with their complexity, risk profile, and scope of operations. Appropriate liquidity risk management is especially important for holding companies since liquidity difficulties can easily spread to subsidiary institutions, particularly in similarly named companies where customers do not always understand the legal distinctions between the holding company and the institution. For this reason, financial institutions must ensure that liquidity is adequate at all levels of the organization to fully accommodate funding needs in periods of stress. This includes legal entities on a stand-alone basis as well as for the consolidated institution.

44. Liquidity risk management processes and funding programs should take into full account the institution's lending, investment and other activities and should ensure that adequate liquidity is maintained at the parent holding company and each of its subsidiaries. These processes and programs should fully incorporate real and potential constraints on the transfer of funds among subsidiaries and between subsidiaries and the parent holding company, including legal and regulatory restrictions. Holding company liquidity should be maintained at levels sufficient to fund holding company and affiliate operations for an extended period of time in a stress environment, where access to normal funding sources are disrupted, without having a negative impact on insured depository institution subsidiaries.

45. More in-depth discussions of the specific considerations surrounding the principles of safe and sound liquidity risk management of holding companies, as well as legal and regulatory restrictions regarding the flow of funds between holding companies and their subsidiaries are contained in the Federal Reserve's *Trading and Capital Markets Activities Manual* and *Bank Holding Company Supervision Manual* and the Office of Thrift Supervision's *Holding Companies Handbook*.

Dated: June 16, 2009.

**John C. Dugan,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, June 29, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

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

By order of the Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

Dated: June 10, 2009.

By the Office of Thrift Supervision.

**John E. Bowman,**

*Acting Director.*

Dated: February 11, 2009.

By the National Credit Union Administration Board.

**Mary F. Rupp,**

*Secretary of the Board.*

[FR Doc. E9–15800 Filed 7–2–09; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

Federal Register

Monday,
July 6, 2009

Part II

# The President

**Executive Order 13510—Waiver Under the Trade Act of 1974 With Respect to the Republic of Belarus**

Federal Register
Vol. 74, No. 127
Monday, July 6, 2009

# Presidential Documents

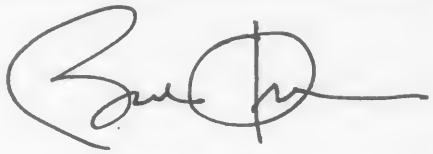
Title 3—

The President

## Executive Order 13510 of July 1, 2009

## Waiver Under the Trade Act of 1974 With Respect to the Republic of Belarus

By the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 402(c)(2) of the Trade Act of 1974, as amended (the "Act") (19 U.S.C. 2432(c)(2)), which continues to apply to the Republic of Belarus pursuant to subsection 402(d) of the Act (19 U.S.C. 2432(d)), and having made the report to the Congress set forth in subsection 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of the Act with respect to the Republic of Belarus.



THE WHITE HOUSE,
*July 1, 2009.*

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

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**H.R. 813/P.L. 111–34**
To designate the Federal building and United States courthouse located at 306 East Main Street in Elizabeth City, North Carolina, as the "J. Herbert W. Small Federal Building and United States Courthouse". (June 30, 2009; 123 Stat. 1924)

**H.R. 837/P.L. 111–35**
To designate the Federal building located at 799 United Nations Plaza in New York, New York, as the "Ronald H. Brown United States Mission to the United Nations Building". (June 30, 2009; 123 Stat. 1925)

**H.R. 2344/P.L. 111–36**
Webcaster Settlement Act of 2009 (June 30, 2009; 123 Stat. 1926)

**S. 407/P.L. 111–37**
Veterans' Compensation Cost-of-Living Adjustment Act of 2009 (June 30, 2009; 123 Stat. 1927)

**S. 615/P.L. 111–38**
To provide additional personnel authorities for the Special Inspector General for Afghanistan Reconstruction. (June 30, 2009; 123 Stat. 1932)

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